

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

2246 Webster Avenue, HDFC,
Plaintiff,

INDEX NO.
FILE NO. 13816.0

33659

-against-

SUMMONS
Place of Venue is Plaintiff's
place of business:

Ernesto Nunez, Evelyn Martinez,

2246 Webster Avenue
Bronx, NY 10457

Defendant(s)

To the above named defendants(s):

YOU ARE HEREBY SUMMONED to appear at the CIVIL COURT OF THE CITY OF NEW YORK, COUNTY OF BRONX at the office of the clerk of the said Court at 851 Grand Concourse, Bronx, NY 10451, in the COUNTY OF BRONX, State of New York, within the time provided by law as noted below and to file an answer to the below complaint with the clerk: upon your failure to answer, judgment will be taken against you for the sum of \$7,486.98 with interest thereon from May 1, 2005 together with costs of this action.

DATED: March 29, 2011

FEE PAID
MAY 05 2011

**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX**

By: Gary Kavulich, Esq.,
Kavulich & Associates, P.C.
Attorney for Plaintiff
181 Westchester Avenue
Suite 500C
Port Chester, NY 10573
(914) 355-2074

Defendant's Address:

Ernesto Nunez,
550 Audubon Avenue, Apt. 56
New York, NY 10040-3365

Evelyn Martinez,
707 N. 6th Street Apt. 2F
Allentown, PA 18102-1607

Note: The law provides that: (a) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or (b) If the summons is served by any means other than personal delivery to you within the City of New York, you must appear and answer within THIRTY days after proof of service thereof is filed with the Clerk of this Court.

COMPLAINT

FIRST ACTION: Plaintiff seeks to recover damages from defendant(s) for breach of a lease agreement in the sum of \$6,251.98 representing rental arrears for the months of May, 2005 balance of \$417.48; June, 2005 through and including March, 2006 at the agreed monthly sum of \$583.45 for the premises known as 2246 Webster Avenue, Apt.3 Bronx, NY 10457 together with costs and disbursements of this action and for such other and further relief as the court may deem just.

SECOND ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$735.00 representing damages together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

THIRD ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$500.00 representing reasonable attorneys fees together with costs and disbursements of this action and for such other further relief as the Court may deem just.

WHEREFORE, Plaintiff demands judgment (A) on the First Action, in the sum of \$6,251.98 plus interest from May 1, 2005 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (B) on the Second Action, in the sum of \$735.00 plus interest from May 1, 2005 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (C) on the Third Action, in the sum of \$500.00 together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

The Plaintiff in this action is NOT required to be licensed by the New York City Department of Consumer Affairs.

AFFIDAVIT OF SERVICE
CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

Index No. 33659/11
 Filed: _____

Attorneys: Kavulich & Associates, P.C.

Address: 30 Church Street, Suite 26, New Rochelle, NY 10801

File No. 13816

2246 WEBSTER AVENUE HDEC.

vs.

ERNESTO NUNEZ,
 EVELYN MARTINEZ

State of New York County of Nassau SS:

Aston G. Evans II, being duly sworn deposes and says:

Deponent is not a party herein, is over 18 years of age. On May 14, 2011 at 8:00p.m.

At: 550 Audubon Avenue, Apt. 56, New York, NY 10040-3365 served the within Summons and Complaint on: ERNESTO NUNEZ, Defendant therein named.

Individual ☐ By delivering a true copy of each to said recipient; deponent knew the person served to be the person described as said person therein.

Corporation ☐ By delivering to and leaving with _____ and that deponent knew the person so served and authorized to accept service on behalf of the Corporation

Suitable Age ☐ By delivering a true copy of each to a person of suitable age and discretion
 Person ☐ Said premises is recipients ☐ actual place of business ☒ dwelling house within the state.
☒

Affixing to Door ☐ By affixing a true copy of each to the door of said premises, which is recipients ☐ actual place of business ☐ dwelling house (place of abode) within the state
☐

Mail Copy ☒ On May 16, 2011 deponent completed service under the last two sections by depositing a copy of the Summons and Complaint to the above address in a 1st Class properly addressed envelope marked "Personal and Confidential" in an official depository under the exclusive care and custody of the United States Post Office in the State of New York.

Deponent was unable, with due diligence to find the recipient or a person of suitable age and discretion having called thereat:

On the _____ day of _____ at _____
 On the _____ day of _____ at _____
 On the _____ day of _____ at _____

Description A description of the Defendant, or other person served on behalf of the Defendant
☐ Sex: F Color of skin: BRN Color of Hair: BLK Age: 45-50 Height: 5'5" Weight: 150LBS

Military Svce ☒ Deponent asked person spoken to whether the recipient was presently in military service of the United States Government or of the State of New York and was informed that the recipient is not. Recipient wore civilian clothes and no military uniform

Other ☒ "Jane Doe" stated that the Defendant is not in the military.

Sworn to before me on this 5-11 day of _____

Aston G. Evans II
 LIC# 1220069

[Signature]
 County of Bronx
 Cheryl Mark
 Lic. No. 0171146042516
 Commission Expires June 5, 2014

AFFIDAVIT OF SERVICE
CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

Index No. 33659/11
Filed: _____

Attorneys: Kavulich & Associates, P.C.

Address: 30 Church Street, Suite 26, New Rochelle, NY 10801

File No. 13816

2246 WEBSTER AVENUE HDFC,

vs.

ERNESTO MUNEZ,
EVELYN MARTINEZ,

State of New York County of Nassau SS:

Aston G. Evans II, being duly sworn deposes and says:

Deponent is not a party herein, is over 18 years of age. On May 13, 2011 at 7:23p.m.

At: 707 N. 6th Street, Apt. 2F, Allentown, PA 18102-3365 served the within Summons and Complaint on: EVELYN MARTINEZ, Defendant therein named.

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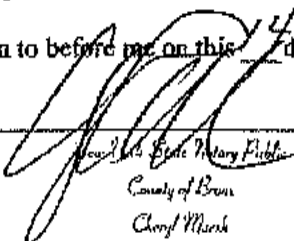
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☐ Sex: F Color of skin: BRN Color of Hair: BLK Age: 35-40 Height: 5'3" Weight: 163LBS

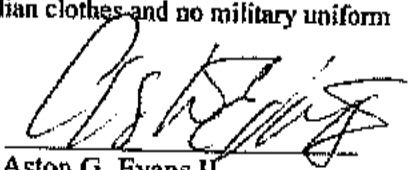
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Other ☒ "Jane Doe" stated that the Defendant is not in the military.

Sworn to before me on this 14 day of 5-11



Cheryl Marsh
Lic. No. 0171146922816
Commission Expires June 5, 2015


Aston G. Evans II
LIC# 1220069

AFFIDAVIT OF SERVICE

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

Index No. 33659/11

Filed: _____

Attorneys: Kavulich & Associates, P.C.

Address: 30 Church Street, Suite 26, New Rochelle, NY 10801

File No. ~~13816~~ 14295

2246 WEBSTER AVENUE HDEC,

vs.

ERNESTO NUNEZ,
EVELYN MARTINEZ,

State of New York County of Nassau SS:

Aston G. Evans II, being duly sworn deposes and says:

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Complaint on: ERNESTO NUNEZ, Defendant therein named.

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On the _____ day of _____ at _____

On the _____ day of _____ at _____

On the _____ day of _____ at _____

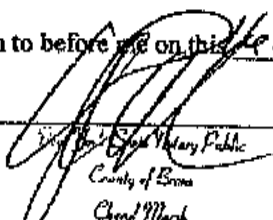
Description A description of the Defendant, or other person served on behalf of the Defendant

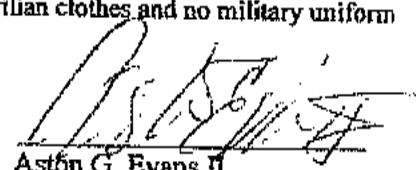
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Other ☒ "Jane Doe" stated that the Defendant is not in the military.

Sworn to before me on this 16 day of 5-11


Cheryl Marsh
County of Bronx
Lic No 01MA5042316
Commission Expires June 5, 2014


Aston G. Evans II
LIC# 1220069

AFFIDAVIT OF SERVICE

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONXIndex No. 33659/11
Filed: _____

Attorneys: Kavulich & Associates, P.C.

Address: 30 Church Street, Suite 26, New Rochelle, NY 10801

File No. 13816-14225

2246 WEBSTER AVENUE HDFC,

vs.

ERNESTO NUNEZ,
EVELYN MARTINEZ,

State of New York County of Nassau SS:

Aston G. Evans II, being duly sworn deposes and says:Deponent is not a party herein, is over 18 years of age. On May 13, 2011 at 7:23p.m.At: 707 N. 6th Street, Apt. 2F, Allentown, PA 18102-3365 served the within Summons and Complaint on: EVELYN MARTINEZ, Defendant therein named.Individual ☐ By delivering a true copy of each to said recipient: deponent knew the person served to be the person described as said person therein.Corporation ☐ By delivering to and leaving with _____ and that deponent knew the person so served and authorized to accept service on behalf of the CorporationSuitable Age ☐ By delivering a true copy of each to a person of suitable age and discretion
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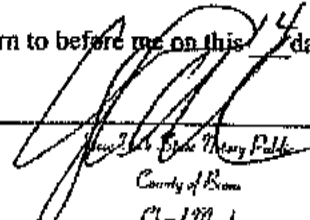
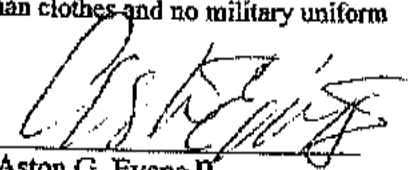
On the _____ day of _____ at _____

On the _____ day of _____ at _____

On the _____ day of _____ at _____

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Other

☒ "Jane Doe" stated that the Defendant is not in the military.Sworn to before me on this 14 day of 5-11
Cheryl M. Ford
County of Bronx
Lic. No. 01211-46042816
Commission Expires June 5, 2014
Aston G. Evans II
LIC# 1220069

10
CIVIL COURT OF THE CITY OF NEW YORK NO CALENDAR NUMBER ASSIGNED
COUNTY OF BRONX: PART 34 INDEX NO. 33659/11
-----X FILE NO. 14285
2246 WEBSTER AVENUE, HDFC,

Plaintiff,

- against -

ERNESTO NUNEZ, EVELYN MARTINEZ,

Defendant.
-----X

NOTICE OF MOTION
TO AMEND THE
SUMMONS AND
COMPLAINT

no aff.?

MOTION BY:

Kavulich & Associates, P.C.
Attorneys for Plaintiff

DATE, TIME AND PLACE
OF HEARING:

October 18, 2011
9:30 A.M.
Motion Term: Part 34, Room 503
Civil Court of the City of New York
County of Bronx
851 Grand Concourse
Bronx, NY 10451

SUPPORTING PAPERS:


Affirmation of Gary M. Kavulich, Esq.,
dated October 5, 2011, and upon all the
papers and proceedings heretofore and
herein.

RELIEF REQUESTED:

An Order amending the summons and complaint *nuc pro tunc* to reflect a prior judgment against the Defendant.

Dated: Port Chester, New York
October 5, 2011

Yours Etc.,



Kavulich & Associates, P.C.
By: Gary M. Kavulich, Esq.,
181 Westchester Ave., Suite 500-C
Port Chester, NY 10573
(914) 355-2074

To: Ernesto Nunez
550 Audubon Avenue, Apt. 56
New York, NY 10040

Evelyn Martinez
707 N. 6th Street, Apt. 2F
Allentown, PA 18102

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: PART 34
-----X
2246 WEBSTER AVENUE, HDFC,

INDEX NO. 33659/11
FILE NO. 14285

Plaintiff,

AFFIRMATION

- against -

ERNESTO NUNEZ, EVELYN MARTINEZ,

Defendant.
-----X

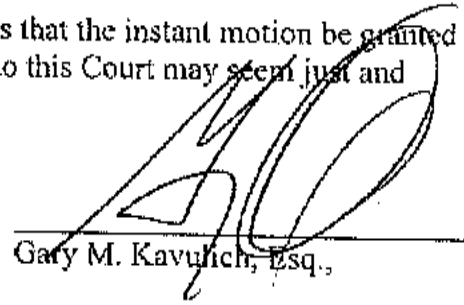
Gary M. Kavulich, Esq., an attorney duly admitted to practice law before the Courts of the State of New York hereby affirms the following under the penalty of perjury.

1. I am a member of the law firm of Kavulich & Associates, P.C., attorneys for the Plaintiff, herein. As such, I am fully familiar with the facts and circumstances of the within proceeding, except as to those matters stated to be based upon information and belief, and as to those matters I believe them to be true. The basis of my belief is information furnished to me by my client, information contained within the Court's file, and information contained within the file as maintained by your affirmant's office.
2. I make this affirmation in support of the Plaintiff's instant motion to amend the summons and complaint nunc pro tunc, and for such other and further relief as this Court deems just and proper. Annexed hereto as Exhibit "1" is the proposed Amended Summons and Complaint.
3. The Plaintiff commenced the instant proceeding due to the Defendant's breach of a lease for the letting of real property known as and located at 2246 Webster Avenue, Apt. 3, Bronx, NY.
4. On May 13, 2011, the Plaintiff served the Defendant with a copy of the Summons and Complaint. Annexed hereto as Exhibit "2" is a copy of the original Summons and Complaint. Annexed hereto as Exhibit "3" is a copy of the affidavit of service.
5. To date, the Defendant has failed to interpose an answer to the Plaintiff's summons and complaint.
6. As such, the Plaintiff has moved for a default judgment on submission. Annexed hereto as Exhibit "4" is the Plaintiff's submission.

7. Thereafter, the Clerk rejected said judgment stating, "move to amend pleadings to reflect facts constituting claim." Annexed hereto as Exhibit "5" is a copy of the Clerk's Judgment Rejection Notification.
8. CPLR 3025(b) states that, "[a] party may amend his pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just...."
9. Upon review and further investigation, it has come to your affirmant's attention that the Plaintiff obtained a prior judgment for a portion of the relief sought in the instant proceeding in a prior proceeding in Housing Court under the index number 46395/05. Annexed hereto as Exhibit "6" is a copy the Decision and Judgment of Possession.
10. As such, the Plaintiff now seeks to amend its summons and complaint to reflect the sum which is represented by said judgment.
11. The relief sought herein - leave to amend the Plaintiff's summons and complaint - will have no prejudicial effect on the Defendant as it only serves to reduce the Defendant's monetary liability as alleged by the Plaintiff in its pleadings.
12. Conversely, the Plaintiff will be highly prejudiced if the relief sought herein is denied as the Plaintiff will be unable to obtain a judgment in this proceeding.
13. Therefore, the Plaintiff requests this Court for leave to amend its Summons and Complaint *nuc pro tunc* to reflect the Plaintiff's prior judgment.

WHEREFORE, your affirmant respectfully requests that the instant motion be granted in all respects and for such other and further relief as to this Court may seem just and proper.

Dated: Port Chester, New York
October 5, 2011



Gary M. Kavulich, Esq.,

EXHIBIT 1

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

Index No.
File No. 14285

-----X
2246 WEBSTER AVENUE HDFC.

Plaintiff,

AMENDED SUMMONS

-against-

Place of Venue is designated
as Plaintiffs' Place of
Business:
2246 Webster Avenue
Bronx, NY 10457

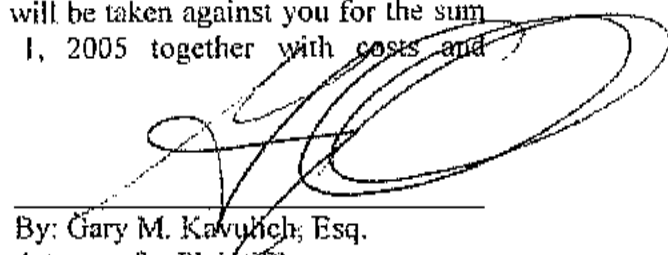
ERNESTO NUNEZ, EVELYN MARTINEZ,

Defendants.
-----X

To the above named Defendant(s):

YOU ARE HEREBY SUMMONED to appear in the CIVIL COURT OF THE CITY OF NEW YORK, COUNTY OF BRONX at the office of the Clerk of the said Court at 851 Grand Concourse, Bronx, NY 10451 to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with the summons, to serve a notice of appearance on the Plaintiff's attorney within (20) days after the service of this summons, exclusive of the day of service or within 30 days after the service in complete if this summons is not personally delivered to you within the State of New York; and in case of your failure to appear or answer, judgment will be taken against you for the sum of \$3,302.11 with interest thereon from May 1, 2005 together with costs and disbursements of this action.

Dated: October 5, 2011


By: Gary M. Kavulich, Esq.
Attorney for Plaintiff
Kavulich & Associates, P.C.
181 Westchester Avenue, Suite 500C
Port Chester, NY 10573
(914) 355-2074

Defendants' Address:

Ernesto Nunez
550 Audubon Avenue, Apt. 56
New York, NY 10040

Evelyn Martinez
707 N. 6th Street, Apt. 2F
Allentown, PA 18102

Note: The law provides that: (a) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or (b) If the summons is served by any means other than personal delivery to you within the City of New York, you must appear and answer within THIRTY days after proof of service thereof is filed with the Clerk of this Court.

AMENDED COMPLAINT

FIRST ACTION: Plaintiff seeks to recover damages from Defendantst for breach of a lease agreement in the sum of \$2,802.11 representing rental arrears for the months of October, 2005 through and including March, 2006 at the agreed monthly sum of \$583.45 for the premises known as 2246 Webster Avenue, Apt. 3, Bronx, NY 10457 together with costs and disbursements of this action and for such other and further relief as the court may deem just.

SECOND ACTION: Plaintiff seeks to recover damages form Defendants for breach of the lease agreement in the sum of \$500.00 representing reasonable attorneys fees together with costs and disbursements of this action and for such other and further relief as the court may deem just.

WHEREFORE: Plaintiff demands judgment (A) on the First Action in the sum of \$2,802.11 plus interest from May 1, 2005 together with costs and disbursements of this action and for such other and further relief as the Court may deem just; (B) on the Second Action in the sum of \$500.00, together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

EXHIBIT 2

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

-----X
2246 Webster Avenue, HDPC,
Plaintiff,

INDEX NO.
FILE NO. ~~138164~~ 14285

-against-

SUMMONS
Place of Venue is Plaintiff's
place of business:

Ernesto Nunez, Evelyn Martinez,

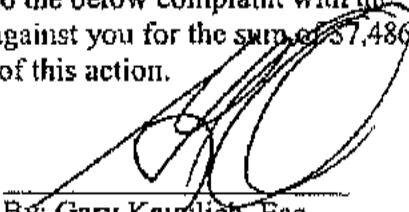
2246 Webster Avenue
Bronx, NY 10457

Defendant(s)

-----X
To the above named defendants(s):

YOU ARE HEREBY SUMMONED to appear at the CIVIL COURT OF THE CITY OF NEW YORK, COUNTY OF BRONX at the office of the clerk of the said Court at 851 Grand Concourse, Bronx, NY 10451, in the COUNTY OF BRONX, State of New York, within the time provided by law as noted below and to file an answer to the below complaint with the clerk: upon your failure to answer, judgment will be taken against you for the sum of \$7,486.98 with interest thereon from May 1, 2005 together with costs of this action.

DATED: March 29, 2011


By: Gary Kavulich, Esq.,
Kavulich & Associates, P.C.
Attorney for Plaintiff
181 Westchester Avenue
Suite 500C
Port Chester, NY 10573
(914) 355-2074

Defendant's Address:

Ernesto Nunez
550 Audubon Avenue, Apt. 56
New York, NY 10040-3365

Evelyn Martinez,
707 N. 6th Street Apt. 2F
Allentown, PA 18102-1607

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The Plaintiff in this action is NOT required to be licensed by the New York City Department of Consumer Affairs.

EXHIBIT 3

AFFIDAVIT OF SERVICE
CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

Index No. 33659/11
Filed: _____

Attorneys: Kavulich & Associates, P.C.

Address: 30 Church Street, Suite 26, New Rochelle, NY 10801
2246 WEBSTER AVENUE HDFC.

File No. ~~13816~~ 14285

vs.
ERNESTO NUNEZ,
EVELYN MARTINEZ,

State of New York County of Nassau SS:

Aston G. Evans II, being duly sworn deposes and says:

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At: 707 N. 6th Street, Apt. 2F, Allentown, PA 18102-3365 served the within Summons and Complaint on: EVELYN MARTINEZ, Defendant therein named.

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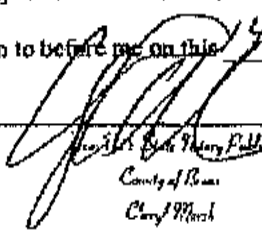
On the _____ day of _____ at _____
On the _____ day of _____ at _____
On the _____ day of _____ at _____

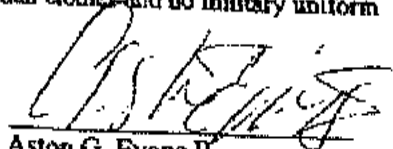
Description: A description of the Defendant, or other person served on behalf of the Defendant
☐ Sex: F Color of skin: BRN Color of Hair: BLK Age: 35-40 Height: 5'3" Weight: 163LBS

Military Svce ☒ Deponent asked person spoken to whether the recipient was presently in military service of the United States Government or of the State of New York and was informed that the recipient is not. Recipient wore civilian clothes and no military uniform

Other ☒ "Jane Doe" stated that the Defendant is not in the military.

Sworn to before me on this _____ day of 5-11


Cheryl M. Feller
County of Bronx
Notary Public
Lic. No. 017716042016
Commission Expires June 5, 2019


Aston G. Evans II
LIC# 1220069

20110525 PM 12:22

AFFIDAVIT OF SERVICE
CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

Index No. 33659/11
Filed: _____

Attorneys: Kavulich & Associates, P.C.

Address: 30 Church Street, Suite 26, New Rochelle, NY 10801

File No. ~~13816~~ 14285

2246 WEBSTER AVENUE HDFC,

vs.

ERNESTO NUNEZ,
EVELYN MARTINEZ,

State of New York County of Nassau SS:

Aston G. Evans II, being duly sworn deposes and says:

Deponent is not a party herein, is over 18 years of age. On May 14, 2011 at 8:00p.m.

At: 550 Audubon Avenue, Apt. 56, New York, NY 10040-3365 served the within Summons and Complaint on: ERNESTO NUNEZ, Defendant therein named.

Individual ☐ By delivering a true copy of each to said recipient: deponent knew the person served to be the person described as said person therein.

Corporation ☐ By delivering to and leaving with _____ and that deponent knew the person so served and authorized to accept service on behalf of the Corporation

Suitable Age Person ☒ By delivering a true copy of each to a person of suitable age and discretion
Said premises is recipients ☐ actual place of business ☒ dwelling house within the state.

Affixing to Door ☐ By affixing a true copy of each to the door of said premises, which is recipients ☐ actual place of business ☐ dwelling house (place of abode) within the state

Mail Copy ☒ On May 16, 2011 deponent completed service under the last two sections by depositing a copy of the Summons and Complaint to the above address in a 1st Class properly addressed envelope marked "Personal and Confidential" in an official depository under the exclusive care and custody of the United States Post Office in the State of New York.

Deponent was unable, with due diligence to find the recipient or a person of suitable age and discretion having called thereat:

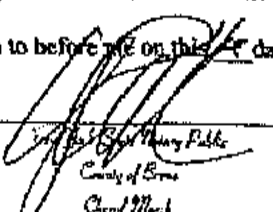
On the day of at
On the day of at
On the day of at

Description A description of the Defendant, or other person served on behalf of the Defendant
☐ Sex: F Color of skin: BRN Color of Hair: BLK Age: 45-50 Height: 5'5" Weight: 150LBS

Military Svc ☒ Deponent asked person spoken to whether the recipient was presently in military service of the United States Government or of the State of New York and was informed that the recipient is not. Recipient wore civilian clothes and no military uniform

Other ☒ "Jane Doe" stated that the Defendant is not in the military.

Sworn to before me on this 5-11 day of _____


Cheryl March
Lic. No. 01911, Adm. 8516
Commission Expires June 3, 2014

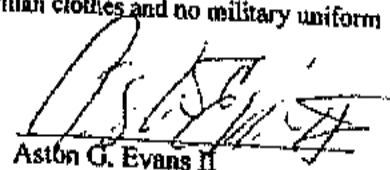

Aston G. Evans II
LIC# 1220069

EXHIBIT 4

STATE OF NEW YORK
COUNTY OF BRONX

2246 Webster Avenue, HDFC.

PLAINTIFF(S)

-AGAINST-

Ernesto Nunez, Evelyn Martinez

DEFENDANT(S)

INDEX NO. 33659/11

FILE NO. 14285.0
JUDGMENT

2246 Webster Avenue
Bronx, NY 10457

AMOUNT CLAIMED LESS PMTS ON ACCT.
INTEREST FROM 11/1/2005

\$2,802.11
\$1419.68
\$4231.19

COSTS BY STATUTE	\$20.00
SERVICE OF SUMMONS AND COMPLAINT	\$25.00
FILING OF SUMMONS AND COMPLAINT	\$45.00
PROSPECTIVE MARSHALL'S FEE	\$40.00
NOTICE OF INQUEST	\$0.00
TRANSCRIPT & DOCKETING	\$0.00

\$130.00
TOTAL \$4361.19

STATE OF NEW YORK, COUNTY OF WESTCHESTER:

THE UNDERSIGNED, ATTORNEY AT LAW OF THE STATE OF NEW YORK, ON OF THE ATTORNEY(S) OF RECORD FOR THE PLAINTIFF(S) IN THE ABOVE ENTITLED ACTION, STATES THAT THE DISBURSEMENTS ABOVE SPECIFIED HAVE BEEN OR WILL NECESSARILY BE MADE OR INCURRED THEREIN AND ARE REASONABLE IN AMOUNT: UPON FAILURE TO ANSWER, THE TIME OF THE DEFENDANT TO APPEAR AND ANSWER HEREIN HAS EXPIRED AND THE SAID DEFENDANT HAS NOT APPEARED AND ANSWERED HEREIN. THE STATUTE OF LIMITATIONS HAS NOT EXPIRED. THE UNDERSIGNED AFFIRMS THIS STATEMENT TO BE TRUE UNDER THE PENALTIES OF PERJURY.

DATED: WESTCHESTER, NY
7/5/2011

KAVULICH & ASSOCIATES, P.C.
BY: GARY KAVULICH, ESQ.
181 WESTCHESTER AVENUE, SUITE 500C
PORT CHESTER, NY 10573

JUDGMENT ENTERED ON
SERVICE OF SUMMONS AND COMPLAINT IN THIS ACTION ON THE DEFENDANT(S)
HEREIN HAVING BEEN COMPLETED ON 7/4/2011 WITHIN THE CITY OF NEW YORK ON THAT DAY AND MORE THAN 20 DAYS

HAVING ELAPSED.

BY FILING ON SAID DAY OF PROOF OF THE SERVICE THEREOF BY SUBSTITUED SERVICE ON DEFENDANT(S) AND MORE THAN 30 DAYS HAVING ELAPSED SINCE THE DAY OF COMPLETION OF SERVICE AND THE TIME OF SAID DEFENDANT(S) TO APPEAR AND ANSWER HAVING EXPIRED, AND

NOW ON MOTION OF KAVULICH & ASSOCIATES, P.C. ATTORNEY(S) FOR THE PLAINTIFF(S) IT IS. ADJUDGED THAT
2246 Webster Avenue, HDFC
RESIDING AT: 2246 Webster Avenue Bronx, NY 10457
RECOVER OF Ernesto Nunez, Evelyn Martinez

RESIDING AT: 550 Audubon Avenue Apt. 56 New York, NY 10040-3365 - Ernesto Nunez
707 N. 6th Street Apt. 2F Allentown, PA 18102-1607 - Evelyn Martinez

THE SUM OF \$2,802.11 WITH INTEREST OF \$1419.68 MAKING A TOTAL OF \$4231.19, TOGETHER WITH \$130.00 COSTS AND DISBURSEMENTS, AMOUNTING IN ALL TO THE SUM OF \$4361.19 AND THAT PLAINTIFF HAVE EXECUTION THEREFORE. SECOND AND THIRD CAUSES OF ACTION ARE HEREBY WAIVED.

CLERK

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

2246 Webster Avenue, HDPC,

PLAINTIFF(S)

AGAINST

Ernesto Nunez, Evelyn Martinez,

DEFENDANT(S)

AFFIDAVIT OF FACTS
CONSTITUTING THE CLAIM
THE DEFAULT AND THE
AMOUNT DUE

STATE OF NEW YORK COUNTY OF WESTCHESTER

SS: GARY KAVULICH, ESQ. HEREBY DEPOSES AND SAYS UNDER THE PENALTIES OF PERJURY, THAT DEPONENT IS THE ATTORNEY FOR THE PLAINTIFF(S) IN THE WITHIN ACTION; THIS ACTION WAS COMMENCED BY SUBSTITUTED SERVICE OF THE SUMMONS AND COMPLAINT UPON DEFENDANT(S) AND IS AN ACTION FOR RENT DUE AND OWING FOR (AFTER APPLICATION OF PAYMENT AND SECURITY DEPOSIT)

November, 2005 balance of \$468.31

December, 2005 \$583.45

January, 2006 \$583.45

February, 2006 \$583.45

March, 2006 \$583.45

AT THE AGREED MONTHLY RENTAL OF \$583.45

ALL OTHER CAUSES OF ACTION ARE HEREBY WAIVED AND DISPOSED. AFTER A COMPLETE AND THOROUGH INVESTIGATION THE DEFENDANT IS FOUND NOT TO BE IN THE MILITARY

RENT WAS NOT PAID BY ANY OTHER SOURCE. I MAKE THIS AFFIRMATION UPON INFORMATION AND BELIEF. A BELIEF PREDICATED UPON CONVERSATIONS WITH MY CLIENT, MY INVOLVEMENT IN THE PROCEEDING AND READING THE FILE IN THIS CASE.

SECOND AND THIRD CAUSES OF ACTION ARE HEREBY WAIVED. THE CAUSE OF ACTION IN THE WITHIN MATTER ACCRUED IN THE STATE OF NEW YORK WHERE THE STATUTE OF LIMITATIONS ON A CONTRACT, UPON WHICH THE ACTION IS BASED, IS SIX(6) YEARS. THE STATUTE OF LIMITATIONS HAS NOT EXPIRED.

WHEREFORE DEPONENT DEMANDS JUDGMENT AGAINST DEFENDANT(S) FOR \$2,802.11 WITH INTEREST FROM 11/1/2005 TOGETHER WITH COSTS AND DISBURSEMENTS OF THE ACTION.

KAVULICH & ASSOCIATES, P.C.

BY: GARY KAVULICH, ESQ.

181 WESTCHESTER AVENUE, SUITE 500C
PORT CHESTER, NY 10573

TO THE DEFENDANT(S): PLEASE TAKE NOTICE THAT THE WITHIN IS A TRUE COPY OF A JUDGMENT MADE AND ENTERED IN THE WITHIN ENTITLED ACTION AND DULY FILED IN THE OFFICE OF THE CLERK OF THE COURT ON

DATED: WESTCHESTER, NY
7/5/2011

YOURS, ETC.,
ATTORNEYS FOR PLAINTIFF

STATE OF NEW YORK, COUNTY OF

SS:

BEING DULY SWORN, DEPOSES AND SAYS; THAT DEPONENT IS NOT A PARTY TO THE ACTION, IS OVER 18 YEARS OF AGE AND RESIDES IN

THAT ON DEPONENT SERVED A TRUE COPY OF THE WITHIN JUDGMENT AND NOTICE OF ENTRY THEREOF (EACH OF) THE FOLLOWING NAMED DEFENDANT(S) AT THE ADDRESS(ES) INDICATED (FOR EACH):

BY DEPOSITING SAME ENCLOSED IN POSTPAID PROPERLY ADDRESSED WRAPPER(S), IN A POST OFFICE- OFFICIAL DEPOSITORY UNDER THE EXCLUSIVE CARE AND CUSTODY OF THE UNITED STATES POSTAL SERVICE WITHIN NEW YORK STATE.

SWORN TO BEFORE ME ON

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

2246 Webster Avenue, HDPC,

INDEX NO. 33659/11

PLAINTIFF(S)

-AGAINST-

AFFIRMATION OF
MAILING OF ADDITIONAL
NOTICE OF SUIT

Ernesto Nunez, Evelyn Martinez

DEFENDANT(S)

GARY KAVULICH, ESQ. HEREBY AFFIRMS THE FOLLOWING UNDER THE PENALTY OF PERJURY.

1. I AM THE ATTORNEY FOR THE PLAINTIFF(S) HEREIN.
2. THE ABOVE ENTITLED ACTION IS AGAINST A NATURAL PERSON AND IS BASED UPON NON PAYMENT OF A CONTRACTUAL OBLIGATION.
3. ON 6/1/2011, I MAILED A COPY OF THE SUMMONS AND COMPLAINT IN THE ABOVE ENTITLED ACTION BY DEPOSITING THE ENVELOPE(S) IN AN OFFICIAL DEPOSITORY UNDER THE EXCLUSIVE CARE AND CUSTODY OF THE U.S. POSTAL SERVICE WITHIN NEW YORK STATE. SAID MAILING WAS BY FIRST CLASS MAIL IN A POSTPAID ENVELOPE(S), PROPERLY ADDRESSED TO THE DEFENDANT(S), THE ENVELOPE(S) BORE THE LEGEND "PERSONAL & CONFIDENTIAL" AND THERE WAS NO INDICATION ON THE OUTSIDE OF THE ENVELOPE(S) THAT THE COMMUNICATION WAS FROM AN ATTORNEY OR CONCERNED AN ALLEGED DEBT. AT DEFENDANT(S):

☒ LAST KNOWN ADDRESS AT: Ernesto Nunez, 550 Audubon Avenue Apt. 56 New York, NY 10040-3365
Evelyn Martinez, 707 N. 6th Street Apt. 2F Allentown, PA 18102-1607

-----PLACE OF EMPLOYMENT AT:

THE ENVELOPE BORE THE LEGEND "PERSONAL & CONFIDENTIAL" AND THERE WAS NO INDICATION ON THE OUTSIDE OF THE ENVELOPE THAT THE COMMUNICATION WAS FROM AN ATTORNEY OR CONCERNED AN ALLEGED DEBT.

-----A KNOWN ADDRESS OF THE DEFENDANT AT:

THIS ADDRESS IS NOT THE RESIDENCE OR PLACE OF EMPLOYMENT OF THE DEFENDANT.

THE AFOREMENTIONED MAILING:

☒ HAS NOT BEEN RETURNED UNDELIVERABLE BY POSTAL SERVICE.

-----WAS RETURNED UNDELIVERABLE BY POSTAL SERVICE AND WAS RE-SENT TO THE DEFENDANT AT:

GARY KAVULICH, ESQ.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

-----X
2246 Webster Avenue, HDFC.

Index No. 33659/11
File No 14285.0

Plaintiff,

-against-

**AFFIDAVIT OF
INVESTIGATOR**

Ernesto Nunez, Evelyn Martinez

██████████ 3547 Defendant(s).

STATE OF NEW YORK)
) SS.: ██████████ 3547
COUNTY OF WESTCHESTER)

I am over 18 years of age, am not a party to this action and reside in Westchester County,
State of New York.

I have been requested by Kavulich & Associates, P.C. attorney for the Plaintiff, to make
an investigation to ascertain if the Defendant(s) Ernesto Nunez is at the present
time in military service for the purpose of entry of judgment.

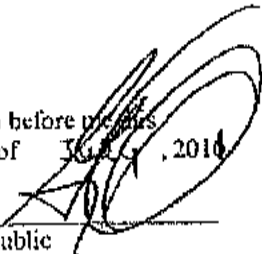
On July 5, 2011, I Denise Miranda, contacted the Defense manpower Data Center
concerning the Defendant Ernesto Nunez military status.

I inputted the Defendant's name and social security number, as provided by the Defendant him/herself, into the Defense
Manpower Data Center.

Under the Defendant's social security number I received an affidavit from the Defense
Manpower Data Center stating that the said Defendant is not currently in the military
service of the United States and the State of New York (National Guard)


Denise Miranda

Sworn to before me this
5 Day of July, 2016


Notary Public

GARY KAVULICH
NOTARY PUBLIC-STATE OF NEW YORK
NO:02KA6305615
QUALIFIED IN WESTCHESTER COUNTY
MY COMMISSION EXPIRES 05/11/2013

-----X
2246 Webster Avenue, HDFC,

Index No. 33659/11
File No. 14285.0

Plaintiff,

-against-

**AFFIDAVIT OF
INVESTIGATOR**

Evelyn Martinez, Ernesto Nunez,
[REDACTED] 1227 Defendant(s).
-----X

STATE OF NEW YORK)
) SS.: [REDACTED] 1227
COUNTY OF WESTCHESTER)

I am over 18 years of age, am not a party to this action and reside in Westchester County,
State of New York.

I have been requested by Kavulich & Associates, P.C. attorney for the Plaintiff, to make
an investigation to ascertain if the Defendant(s) Evelyn Martinez is at the present
time in military service for the purpose of entry of judgment.

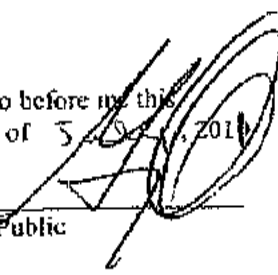
On July 5, 2011, I Denise Miranda, contacted the Defense manpower Data Center
concerning the Defendant Evelyn Martinez military status.

I inputted the Defendant's name and social security number, as provided by the Defendant him/herself, into the Defense
Manpower Data Center.

Under the Defendant's social security number I received an affidavit from the Defense
Manpower Data Center stating that the said Defendant is not currently in the military
service of the United States and the State of New York (National Guard).


Denise Miranda

Sworn to before me this
5 Day of 5, 2011


Notary Public

GARY KAVULICH
NOTARY PUBLIC-STATE OF NEW YORK
NO:02KA6205615
QUALIFIED IN WESTCHESTER COUNTY
MY COMMISSION EXPIRES 05/11/2013

Jul-05-2011 07:13:48

Department of Defense Manpower Data Center



Military Status Report
Pursuant to the Service Members Civil Relief Act

Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
NUNEZ	ERNESTO	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

Mary M. Snavelly-Dixon

Mary M. Snavelly-Dixon, Director
Department of Defense - Manpower Data Center
1600 Wilson Blvd., Suite 400
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. §§ 501 et seq. as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL <http://www.defenselink.mil/fag/pis/PC09SLDR.html>. If you have evidence the person is on active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. §521(c).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects **active duty status** including date the individual was last on active duty, if it was within the preceding 367 days. For historical information, please contact the Service SCRA points-of-contact.

More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d)(1) for a period of more than 30 consecutive days. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy TARs, Marine Corps ARs and Coast Guard RPAs. Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps) for a period of more than 30 consecutive days.

Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate.

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of SCRA extend beyond the last dates of active duty.

Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.
Report ID:6B7C2ACVV6

~~Military Status~~

Department of Defense Manpower Data Center

Jul-05-2011 07:17:01



Military Status Report
Pursuant to the Service Members Civil Relief Act

Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
MARTINEZ	EVELYN	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

Mary M. Snavely-Dixon

Mary M. Snavely-Dixon, Director
Department of Defense - Manpower Data Center
1600 Wilson Blvd., Suite 400
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. §§ 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL <http://www.defenselink.mil/fag/pis/PC09SLDR.html>. If you have evidence the person is on active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. §521(c).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects active duty status including date the individual was last on active duty, if it was within the preceding 367 days. For historical information, please contact the Service SCRA points-of-contact.

~~Active Duty Status~~

More information on "Active Duty Status"

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Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.
Report ID:19J15U7C7C

EXHIBIT 5

Civil Court of the City of New York
County of Bronx

Index No: CV-033659-11/BX



2246 Webster Avenue, HDFC
Plaintiff(s)

-against-
Ernesto Nunez; Evelyn Martinez
Defendant(s)

Judgment Rejection Notification

The judgment which was submitted for the above captioned case has been rejected by the clerk for the following reason(s) listed below:

move to amend pleadings to reflect facts constituting claim .


When you resubmit your judgment application, please attach this sheet or a copy to your submission. This will allow the clerk to process your re-submittal in a timely fashion.

July 22, 2011

Thank you,
The Judgment Clerk

EXHIBIT 6

Civil Court of the City of New York
County of Bronx
Part 14

Index Number 46395/05

2246 Webster

Petitioner(s)

against

Mike 3 Ernesto
Evelyn Martinez

Respondent(s)

Respondent Undertenant(s)

**DECISION AND
JUDGMENT OF POSSESSION**

In Favor of Petitioner

Upon Respondent's Failure to Appear for Trial, or
On Stipulation, or After Trial

NON - PAYMENT

DECISION AND JUDGMENT

Respondent(s) has/have answered, the case was placed on the calendar, and the Respondent(s):

- ☐ failed to appear for trial on _____.
- ☒ stipulated (in writing) (on the record) that the proceeding is settled.
- ☐ appeared before me for trial on _____.

The Court determines that the amount now due to the Petitioner(s) is the sum of \$ _____ for the
period from _____ to _____, for a total now due of \$ _____.

A Counterclaim was interposed and the Court determines that:

- ☐ the amount now due to the Respondent(s) is the sum of \$ _____.
- ☐ such Counterclaim is dismissed (on the merits)(without prejudice).

The Clerk is hereby directed to:

ENTER A JUDGMENT OF POSSESSION in favor of the Petitioner(s) and against the Respondent(s), (and)

ENTER A MONEY JUDGMENT in favor of Petitioner(s) in the amount of \$ 3,449.87, together
with costs and disbursements in the amount of \$ _____, for a total of 3,449.87.

Issuance of Warrant(forthwith)(APS). Execution stayed to and including _____.

9/8/05
Date

[Signature]
Judge Civil/Housing Court

Tape # _____ Digital Count _____, or Court Reporter _____

ENTRY OF JUDGMENT

Judgment entered in accordance with the above on _____

[Signature]
Chief Clerk, Civil Court

Warrant issued to Marshal Evenham on OCT 24 2005

Civil Court of the City of New York

County of Queens

Part 1 Date 9/8/05

Index Number 46395/05

Hon. Tee

2216 Webster
HDFC

Plaintiff(s)/Petitioner(s),

against

Ernest Nunez

Evelyn Martinez

Defendant(s)/Respondent(s)

STIPULATION OF SETTLEMENT

The parties understand that each party has the right to a trial, the right to see a Judge at any time and the right not to enter into a stipulation of settlement. However, after a review of all the issues, the parties agree that they do not want to go to trial and instead agree to the following stipulation in settlement of the issues in this matter:

1. Petitioner Plaintiff Ernest Nunez Carla A. Nunez
Petition amended to include all rent due through 9/30/05
2. Respondent acknowledges owing \$ 3449.81 as all rent due through 9/30/05
3. Final judgment in favor of Petitioner for \$ 3449.81 Warrant to Debt
4. Return Issuance of warrant stayed on condition Respondent pays as follows: Terminated
 - a) 3449.81 on or before 10/10/05
 - b) on or before
 - c) on or before
5. Respondent to additionally pay rent for October as it becomes due. All payments received shall be applied to current rent first.
6. In the event of default on any payment, the full amount shall become due and payable immediately.
7. Petitioner may accept partial payments without prejudice.

5. BIA 2314.05 7/14/05 sup pl. 8/05-9/05 Rent minus a
payments = 3449.81

AGINS, SIEGEL & REZNER, LLP
Attorneys for Petitioner

By: [Signature]

X Evelyn Martinez

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: PART 34

INDEX NO. 33659/11
FILE NO. 14285

-----X
2246 WEBSTER AVENUE, HDPC,

Plaintiff,

AFFIRMATION
OF SERVICE

- against -

ERNESTO NUNEZ, EVELYN MARTINEZ,

Defendant.

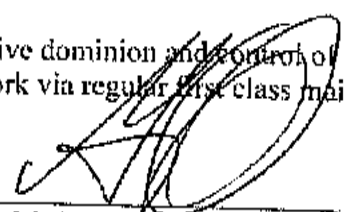
-----X
Gary M. Kavulich, Esq., an attorney duly admitted to practice law before the Courts of the State of New York hereby affirms the following under the penalty of perjury.

On October 5, 2011 I served the within Notice of Motion upon Ernesto Nunez and Evelyn Martinez, the Defendant in this action, by depositing a true copy in a post-paid envelope addressed to:

Ernesto Nunez
550 Audubon Avenue, Apt. 56
New York, NY 10040

Evelyn Martinez
707 N. 6th Street, Apt. 2F
Allentown, PA 18102

in an official depository under the exclusive dominion and control of the United States Postal Service within the State of New York via regular first class mail.



Gary M. Kavulich, Esq.

INDEX NO: 33659/11

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: PART 34

2246 WEBSTER AVENUE, HDFC,

Plaintiff,

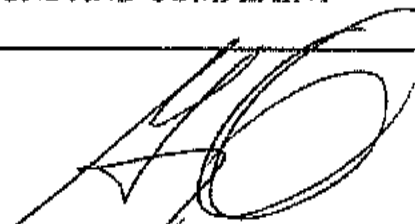
- against -

ERNESTO NUNEZ, EVELYN MARTINEZ,

Defendant.

NOTICE OF MOTION TO AMEND THE SUMMONS AND COMPLAINT

Signature Rule 130-1.1-a



Print Name Beneath

Gary M. Kavulich, Esq.

Kavulich & Associates, P.C.
Attorney for Plaintiff
181 Westchester Ave., Suite 500-C
Port Chester, NY 10573
(914)355-2074

Civil Court of the City of New York
County of BRONX
Part 34

Index Number 33659/11
Motion Cal. # _____ Motion Seq. # _____

2246 Webster Avenue
HD FC

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

File #
14285

Papers

Numbered

Notice of Motion and Affidavits Annexed.....

Order to Show Cause and Affidavits Annexed.....

Answering Affidavits.....

Replying Affidavits.....

Exhibits.....

Other.....

Civil Court
of the
City of New York

OCT 18 2011

ENTERED
BRONX COUNTY

Claimant(s)/Plaintiff(s)/Petitioner(s)
against

ERNESTO NUNEZ
EVELYN MARTINEZ

Defendant(s)/Respondent(s)

Upon the foregoing cited papers, the Decision/Order on this Motion to Dismiss

& Complaint nunc pro tunc is as follows:

Plaintiff's motion is granted on default
summons &
THE Complaint is hereby amended to
Reflect \$3,302¹¹ with interest from May 1,
\$2005.

Plaintiff shall file & serve upon Defendant
a copy of this decision/order, notice of
its entry & the amended summons &
complaint within 30 days of this
decision by mail, certified Return Receipt
Requested.

This constitutes the decision/order of this
COURT

10/18/11

Date

BEN R. BARBATO

Judge, Civil Court
BEN R. BARBATO
JUDGE, CIVIL COURT

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

2246 WEBSTER AVENUE HDFC,

Plaintiff,

-against-

ERNESTO NUNEZ,
EVELYN MARTINEZ,

Defendant(s).

INDEX NO. 33639/11
FILE NO. 14285

NOTICE OF ENTRY

PLEASE TAKE NOTICE, that annexed hereto is the Decision and Order duly
Entered in the office of the Clerk of the Court on the 18th day of October, 2011 along with a copy of
the Amended Summons and Complaint.

Dated: Westchester, NY
October 20, 2011

Yours, etc.,

Kavulich & Associates, PC
181 Westchester Avenue, Suite 500C
Port Chester, NY 10573

To: Ernesto Nunez
550 Audubon Avenue, Apt. 56
New York, NY 10040

Evelyn Martinez
707 N. 6th Street, Apt. 2F
Allentown, PA 18102

FILED CIVIL COURT

2011 OCT 24 PM 10:21

Civil Court of the City of New York

County of BRONX

Part 34

2240 Webster Avenue
HDfc

Claimant(s)/Plaintiff(s)/Petitioner(s)

against

ERNESTO NUNEZ
EVELYN MARTINEZ

Defendant(s)/Respondent(s)

Index Number 33659/11

Motion Cal. # _____

Motion Seq. # _____

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers

considered in the review of this Motion.

Papers

Numbered

Notice of Motion and Affidavits Annexed _____

Order to Show Cause and Affidavits Annexed _____

Answering Affidavits _____

Replying Affidavits _____

Exhibits _____

Other _____

Civil Court
of the
City of New York

OCT 18 2011

ENTERED
BRONX COUNTY

Upon the foregoing cited papers, the Decision/Order on this Motion to Amend Summons

& Complaint nunc pro tunc

is as follows:

Plaintiff's motion is granted on default.
The Complaint is hereby amended to
Reflect \$3,302.11 with interest from May 1,
2009.

Plaintiff shall file & serve upon Defendant
a copy of this decision/order, notice of
its entry & the amended summons &
complaint within 30 days of this
decision by mail, certified Return Receipt
Requested.

This constitutes the decision/order of the
Court.

Date

Judge, Civil Court

JUDGE, CIVIL COURT

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

Index No. 331 57 11
File No. 14285

-----X
2246 WEBSTER AVENUE HDFC,

Plaintiff,

AMENDED SUMMONS

-against-

ERNESTO NUNEZ, EVELYN MARTINEZ,

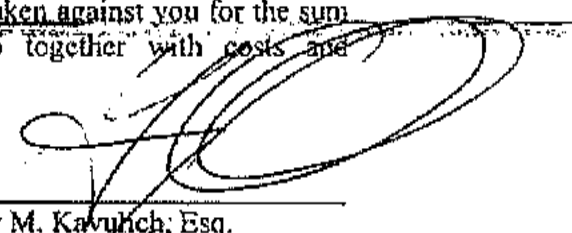
Place of Venue is designated
as Plaintiffs' Place of
Business:
2246 Webster Avenue
Bronx, NY 10457

Defendants.
-----X

To the above named Defendant(s):

YOU ARE HEREBY SUMMONED to appear in the CIVIL COURT OF THE CITY OF NEW YORK, COUNTY OF BRONX at the office of the Clerk of the said Court at 851 Grand Concourse, Bronx, NY 10451 to answer the complaint in this action and to serve a ~~notice of appearance on the Plaintiff's attorney within (20) days after the service of this summons, exclusive of the day of service or within 30 days after the service in complete~~ notice of appearance on the Plaintiff's attorney within (20) days after the service of this summons, exclusive of the day of service or within 30 days after the service in complete if this summons is not personally delivered to you within the State of New York; and in case of your failure to appear or answer, judgment will be taken against you for the sum of \$3,302.11 with interest thereon from May 1, 2005 together with costs and disbursements of this action.

Dated: October 5, 2011


By: Gary M. Kavulich, Esq.
Attorney for Plaintiff
Kavulich & Associates, P.C.
181 Westchester Avenue, Suite 500C
Port Chester, NY 10573
(914) 355-2074

Defendants' Address:

Ernesto Nunez
550 Audubon Avenue, Apt. 56
New York, NY 10040

Evelyn Martinez
707 N. 6th Street, Apt. 2F
Allentown, PA 18102

Note: The law provides that: (a) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or (b) If the summons is served by any means other than personal delivery to you within the City of New York, you must appear and answer within THIRTY days after proof of service thereof is filed with the Clerk of this Court.

AMENDED COMPLAINT

FIRST ACTION: Plaintiff seeks to recover damages from Defendantst for breach of a lease agreement in the sum of \$2,802.11 representing rental arrears for the months of October, 2005 through and including March, 2006 at the agreed monthly sum of \$583.45 for the premises known as 2246 Webster Avenue, Apt. 3, Bronx, NY 10457 together with costs and disbursements of this action and for such other and further relief as the court may deem just.

SECOND ACTION: Plaintiff seeks to recover damages form Defendants for breach of the lease agreement in the sum of \$500.00 representing reasonable attorneys fees together with costs and disbursements of this action and for such other and further relief as the court may deem just.

WHEREFORE: Plaintiff demands judgment (A) on the First Action in the sum of \$2,802.11 plus interest from May 1, 2005 together with costs and disbursements of this action and for such other and further relief as the Court may deem just; (B) on the Second Action in the sum of \$500.00, together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

Index No. 33659/11
File No. 14285

2246 WEBSTER AVENUE HDFC,

Plaintiff,

AFFIDAVIT OF SERVICE
BY MAIL

-against-

ERNESTO NUNEZ,
EVELYN MARTINEZ,

Defendant(s)

STATE OF NEW YORK
COUNTY OF WESTCHESTER ss:

Denise Miranda being duly sworn, deposes and says:

I am over 18 years of age and not a party to this action. On October 20, 2011

I served the within Notice of Entry on the defendant in this action, by depositing

a true copy of the Notice of Entry in a postpaid envelope addressed to:

Ernesto Nunez
550 Audubon Avenue, Apt. 56
New York, NY 10040

in an official depository under the exclusive care and custody of the United States Postal Service,
within the State of New York via Certified mail no. 91 7108 2133 3938 6989 8509/return receipt
requested.

Sworn to before me,
this 20th day of October, 2011

Notary Public

Denise Miranda

GARY KAVULICH
NOTARY PUBLIC-STATE OF NEW YORK
NO: 02KA6205615
QUALIFIED IN WESTCHESTER COUNTY
MY COMMISSION EXPIRES 5/11/2013

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

Index No. 33659/11
File No. 14285

2246 WEBSTER AVENUE HDEC,

Plaintiff,

AFFIDAVIT OF SERVICE
BY MAIL

-against-

ERNESTO NUNEZ,
EVELYN MARTINEZ,

Defendant(s)

STATE OF NEW YORK
COUNTY OF WESTCHESTER ss:

Denise Miranda being duly sworn, deposes and says:

I am over 18 years of age and not a party to this action. On October 20, 2011

I served the within Notice of Entry on the defendant in this action, by depositing

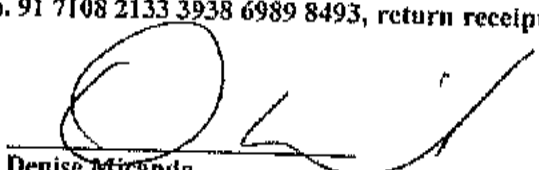
a true copy of the Notice of Entry in a postpaid envelope addressed to:

Evelyn Martinez
707 N. 6th Street, Apt. 2F
Allentown, PA 18102

in an official depository under the exclusive care and custody of the United States Postal Service,
within the State of New York via Certified mail no. 91 7108 2133 3938 6989 8493, return receipt
requested.

Sworn to before me,
this 20th day of October, 2011

Notary Public


Denise Miranda

GARY KAVULICH
NOTARY PUBLIC-STATE OF NEW YORK
NO: 02KA6205615
QUALIFIED IN WESTCHESTER COUNTY
MY COMMISSION EXPIRES 5/11/2013

NOTICE OF ENTRY

PLEASE take notice that the within is a
(certified) true copy of a
duly entered in the office of the clerk of
the within named court on

Dated,

Attorney for
Office and Post Office Address

To

Attorney(s) for

NOTICE OF SETTLEMENT

PLEASE take notice that an order

of which the within is a true copy will be presented
for settlement to the Hon.
one of the judges of the within named Court, at

on
at
Dated,

Yours, etc.

Attorney for
Office and Post Office Address

To
Attorney(s) for

INDEX NO. 33659 YEAR 2011

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

2246 WEBSTER AVENUE HDFC,

Plaintiff,
-against-

ERNESTO NUNEZ,
EVELYN MARTINEZ,

Defendant(s)

NOTICE OF ENTRY

Signature(Rule 139.17(a))

Gary Kavulich, Esq.

Kavulich & Associates, P.C.
Attorney for Plaintiff
Office and Post Office Address, Telephone
181 Westchester Avenue, Suite 500C
Port Chester, NY 10573
914-355-2074

To

Attorney(s) for

Service of a copy of the within is hereby admitted.
Dated

Attorney(s) for

Bronx County Civil Court
Civil Judgment

Plaintiff(s):
2246 Webster Avenue, HDFC

vs.

Defendant(s):
Ernesto Nunez;
Evelyn Martinez

Index Number: CV-033659-11/BX

Judgment issued: On Default

On Motion of:

Kavulich & Associates PC
181 Westchester Avenue, Suite 500C, Port
Chester, NY 10573-

Amount claimed	\$2,802.11	Index Number Fee	\$45.00	Transcript Fee	\$0.00
Less Payments made	\$0.00	Consumer Credit Fee	\$0.00	County Clerk Fee	\$0.00
Less Counterclaim Offset	\$0.00	Service Fee	\$25.00	Enforcement Fee	\$40.00
Interest 11/01/2005 at 9%	\$1,563.58	Non-Military Fee	\$0.00	Other Disbursements	\$0.00
Attorney Fees	\$0.00	Notice of Trial Fee	\$0.00	Other Costs	\$0.00
Cost By Statute	\$20.00	Jury Demand Fee	\$0.00		
Total Damages	\$4,365.69	Total Costs & Disbursements	\$130.00	Judgment Total	\$4,495.69

The following named parties, addressed and identified as creditors below:

Plaintiff creditor(s) and address

(1) 2246 Webster Avenue, HDFC
2246 Webster Avenue, Bronx, NY 10457-

Shall recover of the following parties, addresses and identified as debtors below:

Defendant debtor(s) and address

(1) Ernesto Nunez
550 Audubon Avenue, Apt. 56, New York, NY 10040-
(2) Evelyn Martinez
707 N. 6th Street, Apt. 2F, Allentown, PA 18102-

Judgment entered at the Bronx County Civil Court, 851 Grand Concourse, Bronx, NY 10451, in the STATE OF NEW YORK in the total amount of \$4,495.69 on 01/12/2012 at 08:58 AM.

Judgment sequence 3


CHIEF CLERK
Carol Alt, Chief Clerk Civil Court

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

INDEX NO. 33659/11

2246 Webster Avenue, HDFC.

FILE NO. 14285.0
JUDGMENT

PLAINTIFF(S)

-AGAINST-

Ernesto Nunez, Evelyn Martinez

2246 Webster Avenue
Bronx, NY 10457

DEFENDANT(S)

AMOUNT CLAIMED LESS PMTS ON ACCT.
INTEREST FROM 11/1/2005

\$2,802.11

1513.14

4315.25

COSTS BY STATUTE
SERVICE OF SUMMONS AND COMPLAINT
FILING OF SUMMONS AND COMPLAINT
PROSPECTIVE MARSHALL'S FEE
NOTICE OF INQUEST
TRANSCRIPT & DOCKETING

\$20.00

\$25.00

\$45.00

\$40.00

\$0.00

\$0.00

\$130.00

TOTAL \$4445.25

STATE OF NEW YORK, COUNTY OF WESTCHESTER:

THE UNDERSIGNED, ATTORNEY AT LAW OF THE STATE OF NEW YORK, ON OF THE ATTORNEY(S) OF RECORD FOR THE PLAINTIFF(S) IN THE ABOVE ENTITLED ACTION, STATES THAT THE DISBURSEMENTS ABOVE SPECIFIED HAVE BEEN OR WILL NECESSARILY BE MADE OR INCURRED THEREIN AND ARE REASONABLE IN AMOUNT: UPON FAILURE TO ANSWER THE TIME OF THE DEFENDANT TO APPEAR AND ANSWER HEREIN HAS EXPIRED AND THE SAID DEFENDANT HAS NOT APPEARED AND ANSWERED HEREIN. THE STATUTE OF LIMITATIONS HAS NOT EXPIRED. THE UNDERSIGNED AFFIRMS THIS STATEMENT TO BE TRUE UNDER THE PENALTIES OF PERJURY.

DATED: WESTCHESTER, NY

11/21/2011

KAVULICH & ASSOCIATES, P.C.
BY: GARY KAVULICH, ESQ.
181 WESTCHESTER AVENUE, SUITE 500C
PORT CHESTER, NY 10573

JUDGMENT ENTERED ON

SERVICE OF SUMMONS AND COMPLAINT IN THIS ACTION ON THE DEFENDANT(S)

HEREIN HAVING BEEN COMPLETED ON 7/4/2011 WITHIN THE CITY OF NEW YORK ON THAT DAY AND MORE THAN 20 DAYS

HAVING ELAPSED.

BY FILING ON SAID DAY OF PROOF OF THE SERVICE THEREOF BY SUBSTITUED SERVICE ON DEFENDANT(S) AND MORE THAN 30 DAYS HAVING ELAPSED SINCE THE DAY OF COMPLETION OF SERVICE AND THE TIME OF SAID DEFENDANT(S) TO APPEAR AND ANSWER HAVING EXPIRED, AND

NOW ON MOTION OF KAVULICH & ASSOCIATES, P.C. ATTORNEY(S) FOR THE PLAINTIFF(S) IT IS, ADJUDGED THAT 2246 Webster Avenue, HDFC

RESIDING AT: 2246 Webster Avenue Bronx, NY 10457

RECOVER OF Ernesto Nunez, Evelyn Martinez

RESIDING AT: 550 Audubon Avenue Apt. 56 New York, NY 10040-3365 - Ernesto Nunez
707 N. 6th Street Apt. 2F Allentown, PA 18102-1607 - Evelyn Martinez

THE SUM OF \$2,802.11 WITH INTEREST OF \$1513.14 MAKING A TOTAL OF \$4315.25 TOGETHER WITH \$130.00 COSTS AND DISBURSEMENTS, AMOUNTING IN ALL TO THE SUM OF \$4445.25 AND THAT PLAINTIFF HAVE EXECUTION THEREFORE. SECOND AND THIRD CAUSES OF ACTION ARE HEREBY WAIVED.

CLERK

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

2246 Webster Avenue, HDFC.

PLAINTIFF(S)

AGAINST

AFFIDAVIT OF FACTS
CONSTITUTING THE CLAIM
THE DEFAULT AND THE
AMOUNT DUE

Ernesto Nunez, Evelyn Martinez

DEFENDANT(S)

STATE OF NEW YORK COUNTY OF WESTCHESTER

SS: GARY KAVULICH, ESQ. HEREBY DEPOSES AND SAYS UNDER THE PENALTIES OF PERJURY, THAT DEPONENT IS THE ATTORNEY FOR THE PLAINTIFF(S) IN THE WITHIN ACTION; THIS ACTION WAS COMMENCED BY SUBSTITUTED SERVICE OF THE SUMMONS AND COMPLAINT UPON DEFENDANT(S) AND IS AN ACTION FOR RENT DUE AND OWING FOR (AFTER APPLICATION OF PAYMENT AND SECURITY DEPOSIT)

November, 2005 balance of \$468.31

December, 2005 \$583.45

January, 2006 \$583.45

February, 2006 \$583.45

March, 2006 \$583.45

AT THE AGREED MONTHLY RENTAL OF \$583.45

ALL OTHER CAUSES OF ACTION ARE HEREBY WAIVED AND DISPOSED. AFTER A COMPLETE AND THOROUGH INVESTIGATION THE DEFENDANT IS FOUND NOT TO BE IN THE MILITARY AND RESIDES WITHIN THE CITY OF NEW YORK. RENT WAS NOT PAID BY ANY OTHER SOURCE. I MAKE THIS AFFIRMATION UPON INFORMATION AND BELIEF, A BELIEF PREDICATED UPON CONVERSATIONS WITH MY CLIENT, MY INVOLVEMENT IN THE PROCEEDING AND READING THE FILE IN THIS CASE.

SECOND AND THIRD CAUSES OF ACTION ARE HEREBY WAIVED. THE CAUSE OF ACTION IN THE WITHIN MATTER ACCRUED IN THE STATE OF NEW YORK WHERE THE STATUTE OF LIMITATIONS ON A CONTRACT, UPON WHICH THE ACTION IS BASED, IS SIX(6) YEARS. THE STATUTE OF LIMITATIONS HAS NOT EXPIRED.

WHEREFORE DEPONENT DEMANDS JUDGMENT AGAINST DEFENDANT(S) FOR \$2,802.11 WITH INTEREST FROM 11/1/2005 TOGETHER WITH COSTS AND DISBURSEMENTS OF THE ACTION.

KAVULICH & ASSOCIATES, P.C.
BY: GARY KAVULICH, ESQ.
181 WESTCHESTER AVENUE, SUITE 500C
PORT CHESTER, NY 10573

TO THE DEFENDANT(S): PLEASE TAKE NOTICE THAT THE WITHIN IS A TRUE COPY OF A JUDGMENT MADE AND ENTERED IN THE WITHIN ENTITLED ACTION AND DULY FILED IN THE OFFICE OF THE CLERK OF THE COURT ON

DATED: WESTCHESTER, NY
11/21/2011

YOURS, ETC.,
ATTORNEYS FOR PLAINTIFF

STATE OF NEW YORK, COUNTY OF SS:
BEING DULY SWORN, DEPOSES AND SAYS: THAT DEPONENT IS NOT A PARTY TO THE ACTION, IS OVER 18 YEARS OF AGE AND RESIDES IN

THAT ON DEPONENT SERVED A TRUE COPY OF THE WITHIN JUDGMENT AND NOTICE OF ENTRY THEREOF (EACH OF) THE FOLLOWING NAMED DEFENDANT(S) AT THE ADDRESS(ES) INDICATED (FOR EACH):

BY DEPOSITING SAME ENCLOSED IN POSTPAID PROPERLY ADDRESSED WRAPPER(S), IN -A POST OFFICE- OFFICIAL DEPOSITORY UNDER THE EXCLUSIVE CARE AND CUSTODY OF THE UNITED STATES POSTAL SERVICE WITHIN NEW YORK STATE.

SWORN TO BEFORE ME ON

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

INDEX NO. 33659/11

2246 Webster Avenue, HDFC,

PLAINTIFF(S)

AFFIRMATION OF
MAILING OF ADDITIONAL
NOTICE OF SUIT

-AGAINST-

Ernesto Nunez, Evelyn Martinez

DEFENDANT(S)

GARY KAVULICH, ESQ., HEREBY AFFIRMS THE FOLLOWING UNDER THE PENALTY OF PERJURY.

1. I AM THE ATTORNEY FOR THE PLAINTIFF(S) HEREIN.
2. THE ABOVE ENTITLED ACTION IS AGAINST A NATURAL PERSON AND IS BASED UPON NON PAYMENT OF A CONTRACTUAL OBLIGATION.
3. ON 6/1/2011, I MAILED A COPY OF THE SUMMONS AND COMPLAINT IN THE ABOVE ENTITLED ACTION BY DEPOSITING THE ENVELOPE(S) IN AN OFFICIAL DEPOSITORY UNDER THE EXCLUSIVE CARE AND CUSTODY OF THE U.S. POSTAL SERVICE WITHIN NEW YORK STATE. SAID MAILING WAS BY FIRST CLASS MAIL IN A POSTPAID ENVELOPE(S), PROPERLY ADDRESSED TO THE DEFENDANT(S), THE ENVELOPE(S) BORE THE LEGEND "PERSONAL & CONFIDENTIAL" AND THERE WAS NO INDICATION ON THE OUTSIDE OF THE ENVELOPE(S) THAT THE COMMUNICATION WAS FROM AN ATTORNEY OR CONCERNED AN ALLEGED DEBT. AT DEFENDANT(S):

~~X~~ LAST KNOWN ADDRESS AT: Ernesto Nunez, 550 Audubon Avenue Apt. 56 New York, NY 10040-3365
Evelyn Martinez, 707 N. 6th Street Apt. 2F Allentown, PA 18102-1607

-----PLACE OF EMPLOYMENT AT:

THE ENVELOPE BORE THE LEGEND "PERSONAL & CONFIDENTIAL" AND THERE WAS NO INDICATION ON THE OUTSIDE OF THE ENVELOPE THAT THE COMMUNICATION WAS FROM AN ATTORNEY OR CONCERNED AN ALLEGED DEBT.

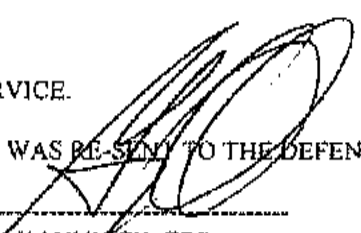
-----A KNOWN ADDRESS OF THE DEFENDANT AT:

THIS ADDRESS IS NOT THE RESIDENCE OR PLACE OF EMPLOYMENT OF THE DEFENDANT.

THE AFOREMENTIONED MAILING:

~~X~~ HAS NOT BEEN RETURNED UNDELIVERABLE BY POSTAL SERVICE.

-----WAS RETURNED UNDELIVERABLE BY POSTAL SERVICE AND WAS RE-SENT TO THE DEFENDANT AT:


GARY KAVULICH, ESQ.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

-----X
2246 Webster Avenue, HDFC,

Index No. 33659/11
File No. 14285.0

Plaintiff,

-against-

**AFFIDAVIT OF
INVESTIGATOR**

Ernesto Nunez, Evelyn Martinez
[REDACTED] 3547 Defendant(s).
-----X

STATE OF NEW YORK)
)SS.: [REDACTED] 3547
COUNTY OF WESTCHESTER)

I am over 18 years of age, am not a party to this action and reside in Westchester County, State of New York.

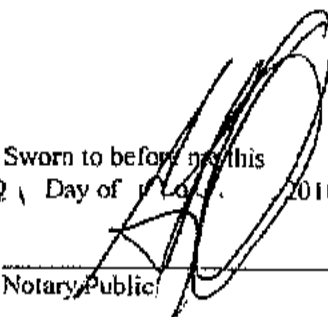
I have been requested by Kavulich & Associates, P.C. attorney for the Plaintiff, to make an investigation to ascertain if the Defendant(s) Ernesto Nunez is at the present time in military service for the purpose of entry of judgment.

On November 21, 2011, I Denise Miranda, contacted the Defense manpower Data Center concerning the Defendant Ernesto Nunez military status.

I inputted the Defendant's name and social security number, as provided by the Defendant him/herself, into the Defense Manpower Data Center.

Under the Defendant's social security number I received an affidavit from the Defense Manpower Data Center stating that the said Defendant is not currently in the military service of the United States and the State of New York (National Guard).


Denise Miranda

Sworn to before me this
21 Day of Dec., 2011

Notary Public

GARY KAVULICH
NOTARY PUBLIC-STATE OF NEW YORK
NO:02KA6205615
QUALIFIED IN WESTCHESTER COUNTY
MY COMMISSION EXPIRES 05/11/2013

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

2246 Webster Avenue, HDFC,

PLAINTIFF,

-AGAINST-

Ernesto Nunez, Evelyn Martinez,

DEFENDANT(S)

-----X INDEX NO:
FILE NO: 138460 14255

AFFIRMATION OF FACTS
CONSTITUTING THE
AMOUNT DUE

_____X

TARA GREKULAK

hereby deposes and says under the penalties of perjury, ss:

That deponent is the managing agent of 2246 Webster Avenue, HDFC, Plaintiff in the within action; this action was commenced by substituted service of the summons and complaint upon defendant(s) and is an action for breach of a lease agreement in the amount of \$2302.11 for the months Nov, 2005 balance of \$468.31; Dec, 2005 through and including March, 2006 at the agreed monthly rental amount of \$583.45 per month (after application of security and after application of payments) no part having been paid, although duly demanded and Damages in the amount of \$735.00. All other causes of action are hereby waived and disposed of. After a complete and thorough investigation, as I have been informed by Plaintiff's counsel, the defendant(s) is/are found not to be in the military

Rent was not paid by any other source. I make this affirmation upon personal Knowledge.

WHEREFORE, Plaintiff demands judgment against defendant for \$ 2302.11 with interest from Nov, 1, 2005 together with costs and disbursements of the action.

Dated: 3/29/2011

Sworn to before me
on this day of May 2011

[Signature]
Notary Public

Tara Grekulak
TARA GREKULAK

CECILIA A. TULLOCH
Notary Public, State of New York
No. 01FE6280710
Qualified in Westchester County
Commission Expires 5/31/14

Department of Defense Manpower Data Center

Nov-21-2011 10:59:45



Military Status Report
Pursuant to the Service Members Civil Relief Act

Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
NUNEZ	ERNESTO	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

Mary M. Snavelly-Dixon

Mary M. Snavelly-Dixon, Director
Department of Defense - Manpower Data Center
1600 Wilson Blvd., Suite 400
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. §§ 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenseink.mil" URL <http://www.defenseink.mil/fag/pis/PC09SLDR.html>. If you have evidence the person is on active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. §521(c).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects **active duty status** including date the individual was last on active duty, if it was within the preceding 367 days. For historical information, please contact the Service SCRA points-of-contact.

More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d)(1) for a period of more than 30 consecutive days. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy TARs, Marine Corps ARs and Coast Guard RPAs. Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps) for a period of more than 30 consecutive days.

Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate.

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of SCRA extend beyond the last dates of active duty.

Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.
Report ID: JN5AI7GMIV

Request for Military Status

Page 1 of 2

Department of Defense Manpower Data Center

Nov-21-2011 11:00:50



Military Status Report
Pursuant to the Service Members Civil Relief Act

< Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
NUNEZ	ERNESTO	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

Mary M. Snavely-Dixon

Mary M. Snavely-Dixon, Director
Department of Defense - Manpower Data Center
1600 Wilson Blvd., Suite 400
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

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If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

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Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.
Report ID:2VAATCU0MM

Index Number 33659/11
Motion Cal. # _____ Motion Seq. # _____

File #
14285

considered in the review of that document.

Planning, January 1964

Order to Show Cause and Affidavit Cause

Zeitschere Abbildung

0-634-2

Case

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

Civil Court
of the
City of New York
OCT 18 2011
ENTERED
BRONX COUNTY

Upon the foregoing cited papers, the Decision/Order on this Motion to STAY & DISMISSE

4 Complaint running procedure is as follows:

Plaintiff's motion is granted on default.
The ^{summons} complaint is hereby amended to
reflect \$3,302⁰⁰ with interest from May 1,
2005.

Plaintiff shall file & serve upon Defendant a copy of this decision/order, notice of its entry & the amended summons & complaint within 30 days of this decision by mail, certified return receipt requested.

5. This Court takes the decision index of the COURT

Date 10/18/11

Don R. Bunker
Judge, Civil Court
JUDGE, CIVIL COURT

Civil Court of the City of New York
County of _____
Part _____

Index Number 33659/11
Motion Cal. # _____ Motion Seq. # _____

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Papers

Notice of Motion and Affidavits Annexed..... of the
Order to Show Cause and Affidavits Annexed.....
Answering Affidavits.....
Replying Affidavits.....
Exhibits.....
Other.....

Civil Court	Numbered
City of New York	
17	2018
EN	ND
DEENA COUNTY	

Claimant(s)/Plaintiff(s)/Petitioner(s)
against

ERNESTO NUÑEZ
EUGEN MARTINEZ
Defendant(s)/Respondent(s)

Upon the foregoing cited papers, the Decision/Order on this Motion to VACATE

DEFAULT JUDGMENT

is as follows:

GRANTED. PLAINTIFFS AFFIDAVIT
of SERVICE INDICATES SERVICE OF THE
SUMMONS AND COMPLAINT ON MAY 14, 2011
DEFENDANTS HAVE PRESENTED TO THE COURT
DOCUMENTS, INCLUDING A LEASE, DRIVER
LICENSE, PAY CHECKS BANK STATEMENTS
WHICH CLEARLY SHOW THAT THEY
HAVE BEEN RESIDING IN PENNSYLVANIA
SINCE APPROXIMATELY 2006.
BASED UPON THE DOCUMENTARY EVIDENCE THE
COURT FINDS THAT DEFENDANTS WERE NOT
PROPERLY SERVED

THE ACTION IS DISMISSED ALL LEVIES, ATTACHMENTS
OR SEIZURES ARE VACATED AND ALL FUNDS
SEIZED AS A RESULT OF THIS ACTION SHALL BE
RETURNED TO THE DEFENDANTS.
THIS CONSTITUTES THE ORDER OF THIS COURT

Date

Judge, Civil Court

HON. RUBÉN FRANCO

Civil Court of the City of New York
County of Bronx Part 39

Appearance Mandatory

Index Number: CV-033659-11/BX

2246 Webster Avenue, HDPC
-against-
Ernesto Nunez... et al.

ORDER TO SHOW CAUSE

To restore case to the calendar, and vacate any judgment, liens and income executions on this defendant on this Index number.
allow proposed answer or dismissing the action

UPON the annexed affidavit of **Ernesto Nunez**, sworn to on April 9, 2013, and upon all papers and proceedings herein:

Let the Claimant(s)/Plaintiff(s) or Claimant(s)/Plaintiff(s) attorney(s) show cause at:

Bronx Civil Court
851 Grand Concourse
Bronx, NY 10451
Part 34C Room 504

on APRIL 23, 2013

at 9:30 AM

or as soon thereafter as counsel may be heard, why an order should not be made:

VACATING the Judgment, and all income executions and restraining notices, if any, restoring the case to the calendar, deeming the proposed answer filed and/or dismissing the action if warranted, and/or granting such and further relief as may be just.

PENDING the hearing of this Order to Show Cause and the entry of an Order thereon, let all proceedings on the part of the Claimant(s)/Plaintiff(s), Claimant(s)/Plaintiff(s) attorney(s) and agent(s) and any Marshal or Sheriff of the City of New York for the enforcement of said Judgment be stayed.

SERVICE of a copy of this Order to Show Cause, and annexed Affidavit, upon the:

Claimant(s)/Plaintiff(s) or named attorney(s):
(Judge to Initial)

Sheriff or Marshal:
(Judge to Initial)

overnight next day mail
by Personal Service by "In Hand Delivery"

by Certified Mail, Return Receipt Requested

by First Class Mail with official Post Office

Certificate of Mailing

overnight next day mail
by Personal Service by "In Hand Delivery"

by Certified Mail, Return Receipt Requested

by First Class Mail with official Post Office

Certificate of Mailing

on or before 4/10/13, shall be deemed good and sufficient

PROOF OF SUCH SERVICE may be filed with the Clerk in the Part indicated above on the return date of this Order to Show Cause.

Mail to Attorney:
Kavulich & Associates PC
(Counsel for Plt),
at 181 Westchester Avenue,
Suite 500C,
Port Chester, NY 10573

Sheriff/Marshal:
NYC Marshal
Biegel, Stephen, Marshal
109 W 38 Street
Suite 200
New York, NY 10018-3615

April 9, 2013

DATE

Hon. Jose A. Padilla, Civil Court Judge, Acting JSC (NYC)

At: 5/17/13

17113-71 OPP

AS to April 16/13

of Court of the City of New York, County of Bronx

Index # CV-033659-11/BX

2246 Webster Avenue, HDEC

-against-

Ernesto Nunez... et al.

Affidavit in support of an order to show cause to restore case to the calendar, vacate any judgment, liens and income executions on this defendant on this Index number, allow proposed answer or dismissing the action

State of New York, County of New York:

Ernesto Nunez, being duly sworn, deposes and says:

(Defendant's initials)

EN a) I am the Party named as (Defendant)(Respondent) in the above titled action

2. EN a) I have been served with a summons and complaint in this action. [NOTE: if Small Claims skip #3, and go to #4]

b) I have not been served, and my first notice of legal action was [NOTE: if you complete any of #2b, skip #3, #4, #5, and go to #6]

EN a Notice of Default Judgment mailed to me

a Restraining Notice on my bank account,

a copy of an Income Execution served on

EN Other: marshal's notice dated 4/5/2012

3. a) I did not appear and answer in the Clerk's Office because: [NOTE: if you complete #3a, skip and go to #6].

b) I did not appear and answer in the Clerk's Office

and I received a date for trial,

but the answer was entered late

Other:

4. On the Date of Trial before Judge/Arbitrator

a stipulation(a written agreement) was made between claimant/plaintiff and defendant.

a judgment was entered after the trial,

a judgment was entered against me by default for my failure to appear.

Other:

5. My reason for not

complying with the stipulation is

following the order of the Court is

appearing in court on the date scheduled for trial is

Other:

6. EN I allege that I have a good defense because: NO. Marshall closed Apt before the time they are saying. we had pay 75% or more of the debt by a garnishment on pay check every week (wages)

7. EN a) I have not had a previous Order to Show Cause regarding this index number.

b) I have had a previous Order to Show Cause regarding this index number but I am making this application because:

8. EN I request that the Judgment be vacated, that the case be restored to the calendar AND that the answer be deemed timely filed.

Sworn to before me this day April 9, 2013

Ernesto Nunez
Signature of Court Employee and Title

(Sign Name)

Ernesto Nunez

550 Audubon Avenue

Apt. 56

New York, NY 10040

all Court of the City of New York
County of Bronx

Index No: CV-033659-11/BX



2246 Webster Avenue, HDPC
-against-
Ernesto Nunez... et al.

**PROPOSED ANSWER IN
WRITING**

~~CONSUMER CREDIT TRANSACTION~~

~~ACTION FOR MONEY ONLY~~

Defendant, **Ernesto Nunez**, at ~~550 Audubon Avenue, Apt. 56, New York, NY 10040~~ answers the Complaint as follows: **933 S Front St. Allentown PA 18103**

Check all that apply)

- 1 ☐ General Denial: I deny the allegations in the complaint
SERVICE
- 2 ☒ I did not receive a copy of the summons and complaint
- 3 ☐ I received the Summons and Complaint, but service was not correct as required by law.
DEFENSES
- 4 ☒ I do not owe this debt
- 5 ☐ I did not incur this debt. I am the victim of identity theft or mistaken identity.
- 6 ☒ I have paid all or part of the alleged debt.
- 7 ☒ I dispute the amount of the debt.
- 8 ☐ I do not have a business relationship with Plaintiff. (Plaintiff lacks standing.)
- 9 ☐ The NYC Department of Consumer Affairs shows no record of plaintiff having a license to collect a debt.
- 10 ☐ Plaintiff does not allege a debt collection license number in the Complaint.
- 11 ☐ Statute of Limitations (the time has passed to sue on this debt: more than six years.)
- 12 ☐ The debt has been discharged in bankruptcy.
- 13 ☐ The collateral (property) was not sold at a commercially reasonable price.
- 14 ☒ Unjust enrichment (the amount demanded is excessive compared with the original debt.)
- 15 ☐ Violation of the duty of good faith and fair dealing.
- 16 ☐ Unconscionability (the contract is unfair.)
- 17 ☒ Laches (plaintiff has excessively delayed in bringing this lawsuit to my disadvantage.)
- 18 ☐ Defendant is in the military.
- 19 ☐ Other: _____

OTHER

- 20 ☒ Please take notice that my only source of income is wages, which is exempt from collection.

COUNTERCLAIM

- 21 Counterclaim(s):\$ _____ Reason: _____

VERIFICATION-

State of New York, County of Bronx ss:

Ernesto Nunez, being duly sworn, deposes and says: I am the Defendant in this proceeding. I have read the Answer in Writing Consumer Credit Transaction and know the contents thereof to be true to my own knowledge except as to those matters stated on information and belief, and as to those matters I believe them to be true

Sworn to before me this APR - 9 2013 day of 20

Michaela Bee

[Signature]
Defendant

Appearances are Mandatory

Civil Court of the City of New York
County of Bronx Part 39

2246 Webster Avenue, HDPC
-against-
Ernesto Nunez... et al.

Index Number: CV-033659-11/BX



ORDER TO SHOW CAUSE

To restore case to the calendar, and vacate any judgment, liens and income executions on this defendant on this Index number, allow proposed answer or dismissing the action

UPON the annexed affidavit of Evelyn Martinez, sworn to on April 9, 2013, and upon all papers and proceedings herein:

Let the Claimant(s)/Plaintiff(s) or Claimant(s)/Plaintiff(s) attorney(s) show cause at:

Bronx Civil Court
851 Grand Concourse
Bronx, NY 10451

Part 34C

on

Room 504

at 9:30 AM

or as soon thereafter as counsel may be heard, why an order should not be made:

VACATING the Judgment, and all income executions and restraining notices, if any, restoring the case to the calendar, deeming the proposed answer filed and/or dismissing the action if warranted, and/or granting such and further relief as may be just..

PENDING the hearing of this Order to Show Cause and the entry of an Order thereon, let all proceedings on the part of the Claimant(s)/Plaintiff(s), Claimant(s)/Plaintiff(s) attorney(s) and agent(s) and any Marshal or Sheriff of the City of New York for the enforcement of said Judgment be stayed.

SERVICE of a copy of this Order to Show Cause, and annexed Affidavit, upon the:

Claimant(s)/Plaintiff(s) or named attorney(s):

(Judge to Initial)

by Personal Service by "In Hand Delivery"

by Certified Mail, Return Receipt Requested

by First Class Mail with official Post Office

Certificate of Mailing

Sheriff or Marshal:

(Judge to Initial)

by Personal Service by "In Hand Delivery"

by Certified Mail, Return Receipt Requested

by First Class Mail with official Post Office

Certificate of Mailing

on or before 4/10/13, shall be deemed good and sufficient

PROOF OF SUCH SERVICE may be filed with the Clerk in the Part indicated above on the return date of this Order to Show Cause.

Mail to Attorney:

Kavulich & Associates PC

(Counsel for Pltff)

, at 181 Westchester Avenue,

Suite 500C,

Port Chester, NY 10573

Sheriff/Marshal:

Biegel, Stephen, Marshall
109 West 38th Street
Suite 200
New York NY 10018

April 9, 2013

DATE

Hon. Jose A. Padilla, Civil Court Judge, Acting

Moving must
proof of all payments
made to Marshall on
next court date
4-10-13

Part of the City of New York, County of Bronx

Index # CV-033659-11/BX

Webster Avenue, HDPC

-against-

Arnesto Nunez... et al.

Affidavit in support of an order to show cause to restore case to the calendar, vacate any judgment, liens and income executions on this defendant on this Index number, allow proposed answer or dismissing the action

State of New York, County of New York:

Evelyn Martinez, being duly sworn, deposes and says:

(Defendant's initials)

☒ (a) I am the Party named as (Defendant) (Respondent) in the above titled action

☒ (b) I have been served with a summons and complaint in this action. [NOTE: if Small Claims skip #3, and go to #4]

☒ I have not been served, and my first notice of legal action was [NOTE: if you complete any of #2b, skip #3, #4, #5, and go to #6]

☒ a Notice of Default Judgment mailed to me

☒ a Restraining Notice on my bank account.

☒ a copy of an Income Execution served on

☒ Other: aware due to co-defendant's garnishment

3. a) I did not appear and answer in the Clerk's Office because: [NOTE: if you complete # 3a, skip and go to #6].

b) I did not appear and answer in the Clerk's Office

and I received a date for trial.

but the answer was entered late

Other:

4. On the Date of Trial before Judge/Arbitrator

a stipulation (a written agreement) was made between claimant/plaintiff and defendant.

a judgment was entered after the trial.

a judgment was entered against me by default for my failure to appear.

Other:

5. My reason for not

complying with the stipulation is

following the order of the Court is

appearing in court on the date scheduled for trial is

Other:

☒ I allege that I have a good defense because: Marshall close Apt before the time they are leaving. we had payed 75% or more of the dept by a check from pay check every week (wages)

☒ a) I have not had a previous Order to Show Cause regarding this index number.

b) I have had a previous Order to Show Cause regarding this index number but I am making this application because:

☒ I request that the Judgment be vacated, that the case be restored to the calendar AND that the answer be deemed timely filed.

Sworn to before me this day April 9, 2013

Signature of Court Employee and Title

(Sign Name)

Evelyn Martinez

707 N. 6th Street

Apt. 2F

Allentown, PA 18102

**PROPOSED ANSWER IN
WRITING**

Defendant, Evelyn Martinez, at 707 N. 6th Street, Apt. 2F, Allentown, PA 18102 answers the Complaint as follows:

1 General Denial: I deny the allegations in the complaint

2 ☒ I did not receive a copy of the summons and complaint

3 I received the Summons and Complaint, but service was not correct as required by law.

4 ☒ I do not owe this debt

5 I did not incur this debt. I am the victim of identity theft or mistaken identity.

6 ☒ I have paid all or part of the alleged debt.

7 ☒ I dispute the amount of the debt.

8 I do not have a business relationship with Plaintiff. (Plaintiff lacks standing.)

9 The NYC Department of Consumer Affairs shows no record of plaintiff having a license to collect a debt.

10 Plaintiff does not allege a debt collection license number in the Complaint.

11 Statute of Limitations (the time has passed to sue on this debt: more than six years.)

12 The debt has been discharged in bankruptcy.

13 The collateral (property) was not sold at a commercially reasonable price.

14 ☒ Unjust enrichment (the amount demanded is excessive compared with the original debt.)

15 Violation of the duty of good faith and fair dealing.

16 Unconscionability (the contract is unfair.)

17 ☒ Laches (plaintiff has excessively delayed in bringing this lawsuit to my disadvantage.)

18 Defendant is in the military.

19 Other:

20 ✓ Please take notice that my only source of income is wages, which is exempt from collection.

COUNTERCLAIM

21 Counterclaim(s):\$ Reason:

State of New York, County of Bronx ss:

Evelyn Martinez, being duly sworn, deposes and says: I am the Defendant in this proceeding. I have read the Answer in Writing Consumer Credit Transaction and know the contents thereof to be true to my own knowledge except as to those matters stated on information and belief, and as to those matters I believe them to be true.

Sworn to before me this _____ day of _____ 20____

Verobrycon Alc.

Evelyn martinez
Defendant

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: PART 34

Index No. 33659/11
File No. 14285

-----X
2246 WEBSTER AVENUE, HDFC,

Plaintiff,

AFFIRMATION IN OPPOSITION

- against -

ERNESTO NUNEZ,
EVELYN MARTINEZ,

Defendants.
-----X

GARY KAVULICH, ESQ., an attorney duly admitted to practice law before the Court of the State of New York, hereby affirms under the penalty of perjury:

1. I am a member of Kavulich & Associates, P.C., attorneys for the Plaintiff herein. As such, I am fully familiar with the facts and circumstances of the within proceeding, except as to those matters stated upon information and belief, as to those matters I believe them to be true. The basis of my belief is information supplied to me by my client, information contained within the court file and information maintained within my office.

2. I make this affirmation in opposition to the Defendants Ernesto Nunez and Evelyn Martinez Orders to Show Cause which seek to restore case to the calendar and request that the judgment be vacated. Please see Defendants instant Order to Show Cause annexed hereto as Exhibit "1."

STATEMENT OF THE UNDISPUTED FACTS

3. On or about September 16, 2002, the Plaintiff entered into a one (1) year lease agreement and subsequent renewal lease agreements with the Defendants for the premises known as 2246 Webster Avenue, Apartment 3, Bronx, New York 10458. Please see a copy of the Plaintiff's agent, Janine Losey, annexed hereto as Exhibit "2." Annexed hereto as Exhibit "3" is a copy of the said lease agreement.

4. Thereafter, the Defendants breached said agreement by failing to pay rent.

5. Upon information and belief, on or about leave date Defendant, Plaintiff obtained legal possession of the subject-premises.

6. The Plaintiff thereafter commenced the instant proceeding against the Defendants for breach of a lease agreement by service of a summons and complaint on or about March 29, 2011. Please see a copy of said summons and complaint annexed hereto as Exhibit "4." Please see also a copy of the affidavit of service for the Defendants annexed hereto as Exhibit "5."

7. Thereafter, the Defendants failed to interpose an answer to said summons and complaint and the Plaintiff was then awarded a judgment in the sum of \$4,459.69. Please see a copy of the judgment annexed hereto as Exhibit "6."

8. Plaintiff then commenced execution measures pursuant to that judgment and on or about May 13, 2011, by serving an information subpoena with a restraining notice on the Defendants' current financial institution.

9. Pursuant to NY CPLR § 5222, §5222(h), §5222(i) or (ii), the bank responded that the funds were below the attachable limit of the protected amount set forth in 31 CFR Part 212 and so Plaintiff obtained no monies to apply to the aforementioned judgment. Please see a copy of said report annexed hereto as Exhibit "7."

10. However, it is your Affirmant's almost twenty years of experience that a bank will duly inform its account holders of any attempt to molest or disturb his or her assets changed to that bank's custody.

11. Plaintiff then commenced further execution measures on that judgment and on or about March 29, 2012, it issued a wage garnishment to New York City Marshal Stephen Biegel and he, in turn, served that income execution upon the Defendant Ernesto Nunez' current place of employment.

12. Pursuant to that income execution, the Plaintiff has received monthly payments since when totaling \$3,169.02 towards the satisfaction of the underlying judgment.

13. Thereafter, on April 9, 2013, more than a year Defendant Ernesto Nunez's started being garnished, the Defendants moved, via the instant Order to Show Cause, seeking to vacate the judgment with a return date for April 23, 2012, and adjourned for May 17, 2013.. Please see aforementioned Exhibit "1."

14. Plaintiff now opposes Defendants' motions.

THE DEFENDANTS INSTANT MOTION DOES NOT DEMONSTRATE AN EXCUSABLE DEFAULT AND MERITORIOUS DEFENSE. THEREFORE THE MOTION SHOULD BE DENIED

15. In order to meet the standard to allow this Court to vacate a judgment the Defendants are required to demonstrate both a reasonable excuse for the default and the existence of a potentially meritorious defense to the action. CPLR 5051(a)(1).

16. Moreover, should the Defendants demonstrate a reasonable excuse for the default, a Court must nonetheless uphold the default when the Defendants' papers submitted in support thereof are replete with self-serving, vague, unsubstantiated denials, and unsupported legal conclusions. *Thapt v. Lutheran Med. Ct.*, 89 AD3d 837 [2d Dep't 2011]; *Garal Wholesalers, Ltd. v. Raven Brands, Inc.*, 82 AD3d 1041 [2d Dep't 2011].

17. The Defendants, in their affidavit in support, asserts as a reason for requesting a new trial is specifically that "I do not owe the debt, I did not receive the summons and complaint, unjust enrichment and laches." Please see the aforementioned Exhibit "1."

18. However, the Defendants do not provide adequate or accurate proof that they do not owe a debt to the Plaintiff. As a result, the Defendants explanation is only self-serving and unsubstantiated.

19. Defendant Ernesto Nunez' claim that he did not receive the summons and complaint is difficult to believe in light of Plaintiff's mailing of that Summons and Complaint. Please see the aforementioned Exhibit "5" also see a copy of the certified mail to the Defendant Ernesto Nunez that was returned by the Post Office marked "unclaimed" annexed hereto as Exhibit "8."

20. The certified mail was addressed to the address of the Defendant Ernesto Nunez as he stated in the Order to Show Cause. Please see aforementioned Exhibit "1." Please see aforementioned Exhibit "5." Please see aforementioned Exhibit "8."

21. Thus, according to the Post Office, the Defendant maintained an address there.

22. The Defendant even denied to your Affirmant that he has any connection to that residence. Please see aforementioned Exhibit "5."

23. In light of the Post Office having him at that address it strains credulity that Defendant denies even a connection there. Please see aforementioned Exhibit "5."

24. It is respectfully stated that such a blatant disregard for an obvious fact should inform the Honorable Court of Defendant's truthfulness.

25. However, the Defendant Ernesto Nunez does not provide adequate or accurate proof that he did not receive a copy of the summons and complaint. As a result, the Defendant's reason is only self-serving and unsubstantiated.

26. As stated earlier, on or about September 16, 2002, the Plaintiff entered into a one (1) year lease agreement and subsequent renewal leases agreements with the Defendants for the premises known as 2246 Webster Avenue, Apartment 3, Bronx, New York 10458. Please see the aforementioned Exhibit "3."

27. As stated within upon information and belief, on or about February 19, 2005, the Defendants vacated the subject premises.

28. As a result, the Defendants are liable for the rent payments for the months of October, 2005 through and including March, 2006.

29. Moreover, the tenant ledger we currently possess clearly shows that the Defendants, at the time they vacated the subject-premises, had a balance of \$6,986.98. Annexed hereto as Exhibit "9" is a copy of the said tenant ledger.

30. Thus, this Court should find the Defendants reason not persuasive and thus not reasonable pursuant to CPLR 5051(a)(1).

31. Even if this Court finds the Defendants above excuses and reasons to constitute a reasonable default, the Defendants must additionally allege a meritorious defense in order for their motion to be successful.

32. The Defendants fail to allege a meritorious defense.

33. Thus, the Defendants alleged defense has therefore failed to provide anything but mere conclusory statements.

34. Moreover, the Defendants alleged meritorious defense does not state any cognizable legal principle.

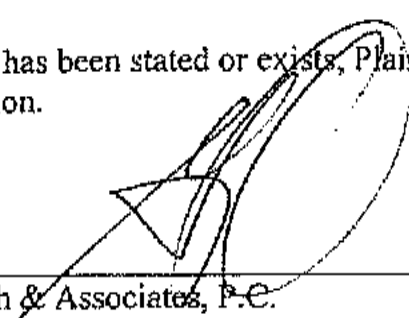
35. Thus, in accord with *Thapt* and *Garal*, this Court must uphold the herein judgment agreed to by both parties.

36. Conversely, the Plaintiff's claim has merit as the Defendants breached the parties' lease agreement by not paying rent pursuant to said lease. To date, the Defendants owe the Plaintiff the amount agreed to in the judgment in the amount of \$1,326.67(\$4,495.69- \$3,169.02 monies collected from the New York City Marshal's income execution) plus interest from May 1, 2005, costs, disbursements and fees. Please see the aforementioned Exhibit "6."

37. As the Defendants fail to set forth both an excusable default and a meritorious defense, and the Plaintiff continues to suffer from the unsatisfied debt, the Plaintiff respectfully requests this Court to deny the Defendants motion to vacate the judgment.

WHEREFORE, as no legal or equitable basis has been stated or exists, Plaintiff respectfully asks that this Court deny the instant motion.

Dated: May 14, 2013
Port Chester, NY



Kavulich & Associates, P.C.
By: Gary Kavulich, Esq.
Attorney for Plaintiff
181 Westchester, Ave., Suite 500C
Port Chester, NY 1057
(914) 355-2074

EXHIBIT 1

County of Bronx Part 39

2246 Webster Avenue, HDPC
-against-
Ernesto Nunez... et al.

Index Number: CV-033659-11/BX



ORDER TO SHOW CAUSE

To restore case to the calendar, and vacate any judgment, liens and income executions on this defendant on this Index number, allow proposed answer or dismissing the action

UPON the annexed affidavit of Ernesto Nunez, sworn to on April 9, 2013, and upon all papers and proceedings herein:

Let the Claimant(s)/Plaintiff(s) or Claimant(s)/Plaintiff(s) attorney(s) show cause at:

Bronx Civil Court
851 Grand Concourse
Bronx, NY 10451
Part 34C Room 504

on *APRIL 23, 2013*

at 9:30 AM

or as soon thereafter as counsel may be heard, why an order should not be made:

VACATING the Judgment, and all income executions and restraining notices, if any, restoring the case to the calendar, deeming the proposed answer filed and/or dismissing the action if warranted, and/or granting such and further relief as may be just.

PENDING the hearing of this Order to Show Cause and the entry of an Order thereon, let all proceedings on the part of the Claimant(s)/Plaintiff(s), Claimant(s)/Plaintiff(s) attorney(s) and agent(s) and any Marshal or Sheriff of the City of New York for the enforcement of said Judgment be stayed.

SERVICE of a copy of this Order to Show Cause, and annexed Affidavit, upon the:

Claimant(s)/Plaintiff(s) or named attorney(s);
(Judge to initial)

Sheriff or Marshal:
(Judge to initial)

overnight next day mail
by Personal Service by "In Hand Delivery"

by Personal Service by "In Hand Delivery"

by Certified Mail, Return Receipt Requested

by Certified Mail, Return Receipt Requested

by First Class Mail with official Post Office

by First Class Mail with official Post Office

Certificate of Mailing

Certificate of Mailing

on or before *4/10/13*, shall be deemed good and sufficient

PROOF OF SUCH SERVICE may be filed with the Clerk in the Part indicated above on the return date of this Order to Show Cause.

Mail to Attorney:
Kavulich & Associates PC
(Counsel for Pltff),
at 181 Westchester Avenue,
Suite 500C,
Port Chester, NY 10573

Sheriff/Marshal:
NYC Marshal
Biegel, Stephen, Marshal
109 W 38 Street
Suite 200
New York, NY 10018-3615

April 9, 2013

DATE

4-10-13
Hon. Jose A. Padilla, Civil Court Judge, Acting JSC (NYC)

2246 Webster Avenue, HDEC
-against-
Ernesto Nunez... et al.

Index # CV-033659-11/BX

Affidavit in support of an order to show cause to restore case to the calendar, vacate any judgment, liens and income executions on this defendant on this Index number, allow proposed answer or dismissing the action

State of New York, County of New York:

Ernesto Nunez, being duly sworn, deposes and says:

(Defendant's initials)

1. EN a) I am the Party named as (Defendant)(Respondent) in the above titled action

2. EN a) I have been served with a summons and complaint in this action. [NOTE: If Small Claims skip #3, and go to # 4]

EN b) I have not been served, and my first notice of legal action was [NOTE: if you complete any of #2b, skip #3, #4, #5, and go to #6]

EN a Notice of Default Judgment mailed to me

EN a Restraining Notice on my bank account

EN a copy of an Income Execution served on

EN Other: marshalls notice dated 1/5/2012

3. EN a) I did not appear and answer in the Clerk's Office because: [NOTE: if you complete # 3a, skip and go to #6].

b) I did not appear and answer in the Clerk's Office

and I received a date for trial.

but the answer was entered late

Other: _____

4. On the Date of Trial before Judge/Arbitrator

a stipulation(a written agreement) was made between claimant/plaintiff and defendant.

a judgment was entered after the trial.

a judgment was entered against me by default for my failure to appear.

Other: _____

5. My reason for not

complying with the stipulation is _____

following the order of the Court is _____

appearing in court on the date scheduled for trial is _____

Other: _____

6. EN I allege that I have a good defense because: NO. Marshall's closed Apt. by the time they are saying we had pay 75% of more of the debt by a person who was pay check every week (unpaid)

7. EN a) I have not had a previous Order to Show Cause regarding this index number.

b) I have had a previous Order to Show Cause regarding this index number but I am making this application because: _____

8. EN I request that the Judgment be vacated, that the case be restored to the calendar AND that the answer be deemed timely filed.

Sworn to before me this day April 9, 2013

Signature of Court Employee and Title

(Sign Name)

Ernesto Nunez

550 Audubon Avenue

Apt. 56

New York, NY 10040

County of Bronx

2246 Webster Avenue, HDEC
-against-
Ernesto Nunez... et al.

Index No: CV-033659-11/BX



**PROPOSED ANSWER IN
WRITING**

~~CONSUMER CREDIT TRANSACTION~~
ACTION FOR MONEY ONLY

Defendant, Ernesto Nunez, at ~~550 Audubon Avenue, Apt. 56, New York, NY 10040~~ answers the Complaint as follows: 933 S Front St. Allentown PA 18103

Check all that apply)

- 1 ☐ General Denial: I deny the allegations in the complaint
SERVICE
- 2 ☒ I did not receive a copy of the summons and complaint
- 3 ☐ I received the Summons and Complaint, but service was not correct as required by law.
DEFENSES
- 4 ☒ I do not owe this debt
- 5 ☐ I did not incur this debt. I am the victim of identity theft or mistaken identity.
- 6 ☒ I have paid all or part of the alleged debt.
- 7 ☒ I dispute the amount of the debt.
- 8 ☐ I do not have a business relationship with Plaintiff. (Plaintiff lacks standing.)
- 9 ☐ The NYC Department of Consumer Affairs shows no record of plaintiff having a license to collect a debt.
- 10 ☐ Plaintiff does not allege a debt collection license number in the Complaint.
- 11 ☐ Statute of Limitations (the time has passed to sue on this debt: more than six years.)
- 12 ☐ The debt has been discharged in bankruptcy.
- 13 ☐ The collateral (property) was not sold at a commercially reasonable price.
- 14 ☒ Unjust enrichment (the amount demanded is excessive compared with the original debt.)
- 15 ☐ Violation of the duty of good faith and fair dealing.
- 16 ☐ Unconscionability (the contract is unfair.)
- 17 ☒ Laches (plaintiff has excessively delayed in bringing this lawsuit to my disadvantage.)
- 18 ☐ Defendant is in the military.
- 19 ☐ Other: _____

OTHER

- 20 ☒ Please take notice that my only source of income is wages, which is exempt from collection.

COUNTERCLAIM

- 21 Counterclaim(s):\$ _____ Reason: _____

VERIFICATION-

State of New York, County of Bronx ss:

Ernesto Nunez, being duly sworn, deposes and says: I am the Defendant in this proceeding. I have read the Answer in Writing Consumer Credit Transaction and know the contents thereof to be true to my own knowledge except as to those matters stated on information and belief, and as to those matters I believe them to be true

Sworn to before me this APR - 9 2018 day of 20

Michael Doe

Ernesto Nunez
Defendant

County of Bronx Part 39

Index Number: CV-033659-11/BX



2246 Webster Avenue, HDPC
-against-
Ernesto Nunez... et al.

ORDER TO SHOW CAUSE

To restore case to the calendar, and vacate any judgment, liens and income executions on this defendant on this Index number, allow proposed answer or dismissing the action

UPON the annexed affidavit of Evelyn Martinez, sworn to on April 9, 2013, and upon all papers and proceedings herein:

Let the Claimant(s)/Plaintiff(s) or Claimant(s)/Plaintiff(s) attorney(s) show cause at:

Bronx Civil Court
851 Grand Concourse
Bronx, NY 10451

Part 34C Room 504
on April 23, 2013

at 9:30 AM

or as soon thereafter as counsel may be heard, why an order should not be made:

VACATING the Judgment, and all income executions and restraining notices, if any, restoring the case to the calendar, deeming the proposed answer filed and/or dismissing the action if warranted, and/or granting such and further relief as may be just..

PENDING the hearing of this Order to Show Cause and the entry of an Order thereon, let all proceedings on the part of the Claimant(s)/Plaintiff(s), Claimant(s)/Plaintiff(s) attorney(s) and agent(s) and any Marshal or Sheriff of the City of New York for the enforcement of said Judgment be stayed.

SERVICE of a copy of this Order to Show Cause, and annexed Affidavit, upon the:

Claimant(s)/Plaintiff(s) or named attorney(s):
(Judge to Initial)

Sheriff or Marshal:
(Judge to Initial)

by Personal Service by "In Hand Delivery"
by Certified Mail, Return Receipt Requested
by First Class Mail with official Post Office Certificate of Mailing

by Personal Service by "In Hand Delivery"
by Certified Mail, Return Receipt Requested
by First Class Mail with official Post Office Certificate of Mailing

on or before 4/10/13, shall be deemed good and sufficient

PROOF OF SUCH SERVICE may be filed with the Clerk in the Part indicated above on the return date of this Order to Show Cause.

Mail to Attorney:
Kavulich & Associates PC
(Counsel for Pltff)
at 181 Westchester Avenue,
Suite 500C,
Port Chester, NY 10573

Sheriff/Marshal:

Biegel, Stephen, Marshall
109 West 38th Street
Suite 200
New York NY 10018

April 9, 2013

DATE

Hon. Jose A. Padilla, Civil Court Judge, Acting

4/9/13
Moved must
proof of all payments
made to Marshall on
next court date.
Page 74 of 104

Index # CV-033659-11/BX

2246 Webster Avenue, HDFO
-against-
Ernesto Nunez... et al.

Affidavit in support of an order to show cause to restore case to the calendar, vacate any judgment, liens and income executions on this defendant on this Index number, allow proposed answer or dismissing the action

State of New York, County of New York:

Evelyn Martinez, being duly sworn, deposes and says:
(Defendant's initials)

1. ☒ a) I am the Party named as (Defendant)(Respondent) in the above titled action

2. ☒ a) I have been served with a summons and complaint in this action. [NOTE: if Small Claims skip #3, and go to # 4]

☒ b) I have not been served, and my first notice of legal action was [NOTE: if you complete any of #2b, skip #3, #4, #5, and go to #6]

☒ a Notice of Default Judgment mailed to me
☒ a Restraining Notice on my bank account.
☒ a copy of an Income Execution served on

Other: aware due to co-defendant's garnishment

3. ☐ a) I did not appear and answer in the Clerk's Office because: [NOTE: if you complete # 3a, skip and go to #6].

☐ b) I did not appear and answer in the Clerk's Office
and I received a date for trial.
but the answer was entered late
Other: _____

4. On the Date of Trial before Judge/Arbitrator

☐ a stipulation(a written agreement) was made between claimant/plaintiff and defendant.
☐ a judgment was entered after the trial.
☐ a judgment was entered against me by default for my failure to appear.
Other: _____

5. My reason for not

☐ complying with the stipulation is _____
☐ following the order of the Court is _____
☐ appearing in court on the date scheduled for trial is _____
Other: _____

6. ☒ I allege that I have a good defense because: Marshall close Apt before the time they are serving. we had payed 75% or more of the debt by a garnishment on pay check every week (wages)

7. ☒ a) I have not had a previous Order to Show Cause regarding this index number.

☐ b) I have had a previous Order to Show Cause regarding this index number but I am making this application because: _____

8. ☒ I request that the Judgment be vacated, that the case be restored to the calendar AND that the answer be deemed timely filed.

Sworn to before me this day April 9, 2013

(Sign Name)

Evelyn Martinez

707 N. 6th Street

Apt. 2F

Allentown, PA 18102

Signature of Court Employee and Title

County of Bronx

2246 Webster Avenue, HDFO
-against-
Ernesto Nunez... et al.

Index No: CV-033659-11/BX

**PROPOSED ANSWER IN
WRITING**

 ACTION FOR MONEY ONLY

Defendant, Evelyn Martinez, at 703 N. 6th Street, Apt. 2F, Allentown, PA 18102 answers the Complaint as follows:

933 S. Front St.
Allentown PA 18103

(Check all that apply)

1 General Denial: I deny the allegations in the complaint

SERVICE

2 ☒ I did not receive a copy of the summons and complaint

3 I received the Summons and Complaint, but service was not correct as required by law.

DEFENSES

4 ☒ I do not owe this debt

5 I did not incur this debt. I am the victim of identity theft or mistaken identity.

6 ☒ I have paid all or part of the alleged debt.

7 ☒ I dispute the amount of the debt.

8 I do not have a business relationship with Plaintiff. (Plaintiff lacks standing.)

9 The NYC Department of Consumer Affairs shows no record of plaintiff having a license to collect a debt.

10 Plaintiff does not allege a debt collection license number in the Complaint.

11 Statute of Limitations (the time has passed to sue on this debt: more than six years.)

12 The debt has been discharged in bankruptcy.

13 The collateral (property) was not sold at a commercially reasonable price.

14 ☒ Unjust enrichment (the amount demanded is excessive compared with the original debt.)

15 Violation of the duty of good faith and fair dealing.

16 Unconscionability (the contract is unfair.)

17 ☒ Laches (plaintiff has excessively delayed in bringing this lawsuit to my disadvantage.)

18 Defendant is in the military.

19 Other: _____

OTHER

20 ☒ Please take notice that my only source of income is wages, which is exempt from collection.

COUNTERCLAIM

21 Counterclaim(s):\$ _____ Reason: _____

VERIFICATION-

State of New York, County of Bronx ss:

Evelyn Martinez, being duly sworn, deposes and says: I am the Defendant in this proceeding. I have read the Answer in Writing Consumer Credit Transaction and know the contents thereof to be true to my own knowledge except as to those matters stated on information and belief, and as to those matters I believe them to be true

APR - 9. 2018

Sworn to before me this _____ day of _____ 20____

Mohab Dac

Evelyn Martinez
Defendant

EXHIBIT 2

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: PART 3C
-----X

INDEX NO. 33659/11
FILE NO. 14285

2246 WEBSTER AVENUE, HDFC,

Plaintiff,

-against-

AFFIDAVIT IN
OPPOSITION

ERNESTO NUNEZ,
EVELYN MARTINEZ,

Defendants.
-----X

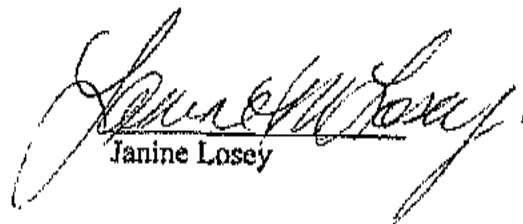
STATE OF NEW YORK)
) SS
COUNTY OF BRONX)

I, Janine Losey, being duly sworn deposes and says:

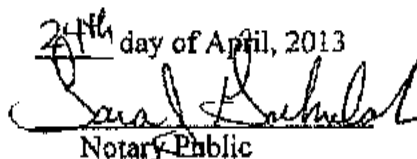
1. That I am the managing agent for the Plaintiff, 2246 Webster Avenue, HDFC herein, and as such I am fully familiar with the facts and circumstances of this proceeding.
2. The Plaintiff entered into a lease agreement with the Defendants, for a period of one (1) year from September 16, 2002 through and including September 30, 2003 for the premises known as 2246 Webster Avenue, Apt. 3, Bronx, NY 10457.
3. The Parties thereafter entered into a series of renewal lease agreements, with the latest renewal lease agreement ending on March, 2006.
4. Defendant then breached said renewal lease agreement and allowed a balance of \$2,802.11 to accumulate representing rental arrears for the months of October, 2005 through and including March, 2006 at the agreed upon monthly sum of \$583.45.

5. On or about February 19, 2005, the Defendants' were evicted from the premises known as 2246 Webster Avenue, Apt. 3, Bronx, New York 10458.
6. The Plaintiff then brought this instant action seeking to recover arrears balance owed by Defendants' to Plaintiff.
7. Thereafter, Defendants' failed to interpose an answer thereby defaulting on this action.
8. Accordingly, on January 12, 2012, a judgment was entered in the amount of \$4,495.69.
9. On, or about March 29, 2012, Plaintiff then commenced Income Execution measure pursuant to that judgment on the defendant, Ernesto Nunez current place of employment.
10. As of this date, Plaintiff has received \$3,169.02 towards the satisfaction of the said judgment.
11. Therefore, the remaining amount of \$2,802.11 remains due and outstanding.
12. My attorney has further advised me that the Defendant now seeks to vacate the judgment taken against them in this matter.

WHEREFORE, your deponent prays that the Court deny the instant motion as no legal or equitable basis has been provided.


Janine Losey

Sworn to before me this

24th day of April, 2013

Notary Public

TARA J. GREKULAK
NOTARY PUBLIC-STATE OF NEW YORK
No. 01GR5198908
Qualified in Westchester County
My Commission Expires February 02, 2017

EXHIBIT 3



Copyright © 1996 by New
Sublease Association

RENT STABILIZED LEASE
ATTACHED RIDER SETS FORTH RIGHTS AND OBLIGATIONS OF TENANTS AND
LANDLORDS UNDER THE RENT STABILIZATION LAW. (LOS DERECHOS Y
RESPONSABILIDADES DE INQUILINOS Y CASEROS ESTAN DISPONIBLE EN ESPAÑOL.)

Owner and Renter make this apartment lease agreement as follows:

Owner's Name: 2246 WEBSTER AVENUE HDFC

Owner's Address for Notices: 660 E. 183 ST. BX, NY 10458

Renter's Name: 1. MR. ERNESTO NUNEZ Social Security #: [REDACTED] 3547

2. _____ Social Security #: _____

Renter's Present Address: 877 BROOK AVENUE, BRONX, NY 10451

Address of Premises to Be Rented: 2246 WEBSTER AVENUE, BRONX, NY 10457

Apt. No.: 3 Term of This Lease (Check one): ☒ 1 year ☐ 2 years *Monthly Rent: 585.96 ^{792.52}

PREFERRED RENT: \$525.00

Date of Lease: 09/16/02 Beginning: 09/16/02 Ending: 09/30/03

* If a preferential rent is being charged, the amount of the preferential rent is set forth in the attached rider.

1. HEADINGS: Paragraph headings are only for ready reference to the terms of this lease.

2. CONDITION "AS IS": Renter acknowledges inspecting the apartment prior to signing this lease and accepts the apartment in the condition it is in as of such inspection. Renter acknowledges that the apartment is free of defects. Owner warrants that the apartment and building are fit for habitation and there are no conditions dangerous to health, life or safety.

3. USE AND OCCUPANCY OF APARTMENT: The apartment is to be used and occupied for private residential purposes only, as the primary residence of Renter. The apartment may be occupied only by Renter named in this lease, Renter's immediate family, or other occupants in accordance with the applicable provisions of law. Renter agrees that the apartment will be occupied only by the following individuals, in addition to Renter:

Name: Birth Date: Relation to Renter:

→ Ernesto Nunez [REDACTED] 80 Self

Evelyn Martinez [REDACTED] 32 Spouse

[REDACTED] [REDACTED] 02 Daughter

Renter is obligated to advise Owner, in writing, if any additional occupant moves into the apartment. Such notice must be furnished by Renter to Owner within 10 days of the date such additional occupant moves into the apartment. The apartment may not be occupied by more than the number of occupants permitted by §27-2075 of the Housing Maintenance Code or by §235-f of the Real Property Law, whichever is less.

4. RENTER'S POSSESSION OF APARTMENT: Owner shall not be liable for failure to give Renter possession of the apartment on the beginning day of the lease term. Rent shall be payable as of the beginning of the term unless Owner is unable to give possession, in which case rent shall be payable as of the date possession is available. Owner must give possession within 30

days of the beginning day of the lease term. If not, Renter may cancel this lease and obtain a refund of money deposited. Owner will notify Renter as of the date possession is available. The ending date of the lease term will not change in the event Owner is unable to give possession as of the beginning of the lease term.

5. RENT, ADDED RENT, RENT ADJUSTMENTS: a. Rent payments for each month are due on or before the first day of each month at the address above or at a location designated by Owner in writing. Notice from Owner to Renter that rent is due is not required. The rent must be paid in full without deductions. The first month's rent and added rent must be paid when Renter signs this lease. b. Renter may be required to pay other charges and fees to Owner under the terms of this lease. They are called "added rent." This added rent will be payable as rent, together with the next monthly rent due. If Renter fails to pay the added rent on time, Owner shall have the same rights against Renter as if Renter failed to pay rent. c. If this apartment is subject to the rent stabilization laws, the rent to be paid during the term of this lease may be adjusted, prospectively or retroactively, pursuant to an order of the New York State Division of Housing and Community Renewal (DHCR). Renter agrees to be bound by such determination, and to pay any increase in rent in the manner specified by the agency. In the event the applicable rent guideline has not been fixed by the Rent Guidelines Board (RGB) by the date the lease is executed, the rent provided for in this lease may be increased or decreased retroactively to the commencement date of the lease consistent with orders issued by the RGB. Added rent as defined herein shall include, but is not limited to:

MCI IMPROVEMENTS

TENANT DAMAGES TO
PREMISES ←

J-51

6. FAILURE TO PAY RENT ON DUE DATE: Rent is due by the first day of each month. Payment after the 10th day of each month shall be considered a "late payment." Renter expressly agrees and understands that three (3) or more late payments in any twelve month period shall be deemed to be a failure to comply

if any, shall be used by messengers and trades people for entering and leaving and the passenger elevators, if any, shall be used by them for any purpose.

42. LAUNDRY: Laundry machines if any, provided by Owner, shall be used by Renter in the manner and at the times that Owner designates. Renter shall not dry or air clothes on the roof or the terrace or balcony, if any. Renter may use laundry machines, if any, at their own risk.

43. OBJECTIONABLE CONDUCT: Renter, their families, guests, employees, or visitors shall not engage in any conduct which makes the apartment or building less fit to live in for Renter or other occupants. Renter shall not make or permit any disturbing noises in the apartment or building or permit anything to be done that will interfere with the rights, comfort or convenience of other renters. Renter shall not play a musical instrument or operate or allow to be operated audio or video equipment so as to disturb or annoy any other occupant of the building.

44. NO PROJECTIONS: Renter may not install or cause to be installed anything on the roof or outside wall of the building or any balcony, terrace, or window.

45. MOVING: Renter can use the elevator or service elevator, if any, to move furniture and possessions only on designated days and at designated hours. Owner shall not be liable for any costs, expenses or damages incurred by Renter in moving because of delays caused by unavailability of the elevator. Renter shall be liable for any damage caused to the building or the apartment during such move.

46. WAIVER OF FOREIGN SOVEREIGN AND DIPLOMATIC IMMUNITY: Renter represents that he is not subject to foreign sovereign or diplomatic immunity. Renter expressly waives the doctrine of foreign sovereign immunity and diplomatic immunity and consents to the jurisdiction of the Housing Court and all other courts. Renter expressly represents that in the event a judgment is obtained against him, Owner may enforce the judgment against any property or assets of Renter, wherever they are located.

47. MILITARY STATUS: Renter represents that he is not in the United States military, and is not dependent upon a member of the United States military. Renter must notify Owner within ten days of enlistment in the military.

48. PARTIES BOUND: This lease agreement is binding on Owner and Renter, and on all those who claim a right, or have a right, to succeed to the legal interest of Owner and Renter.

49. FORMS: Renter agrees to complete any and all forms that may be requested by Owner from time to time.

50. SUBORDINATION: The rights of Renter, including all rights granted under the terms of this lease are, and shall be, subject to and subordinate to the terms of any mortgage on the building or the land under the building which now exists, or which may hereafter exist. The foregoing shall include but not be limited to any modification, consolidation or extension agreement of any existing mortgage on the land or building.

51. SINGULAR/PLURAL and JOINT/SEVERAL: The use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires. If more than one entity is renting the apartment, their obligations shall be joint and several.

52. CONDEMNATION/EMINENT DOMAIN: If the building, or any part of the building, is taken or condemned by a public authority or government agency, this lease will end on the date of such taking. In such event, Renter will have no claim for damages against Owner based upon such taking, and Renter will be required to surrender the apartment to Owner upon 30 days written notice from Owner to Renter of such government taking.

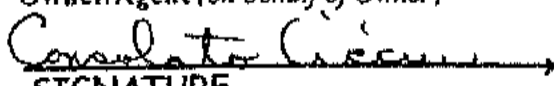
53. CONSTRUCTION/CONVENIENCE: Neighboring buildings may be the subject of construction, renovation or demolition. Owner will not be liable to Renter, nor shall Renter seek to hold Owner liable for interference with views, light, air flow, or ventilation, the covenant of quiet enjoyment, or breach of the warranty of habitability whether such interference is temporary or permanent, if such interference results from activities conducted on adjoining Owners' properties.

54. NO WAIVER: The failure of Owner to insist at any time upon strict performance of any clause in this lease shall not be construed as a waiver of Owner's rights. No waiver by Owner of any provision of this lease can be made unless made in writing by Owner. Acceptance of rent by Owner with knowledge of the breach of any condition or term of this lease is not a waiver of the breach.

55. CREDIT REPORTS: Renter authorizes Owner to use the Social Security number of Renter to obtain any and all credit reports for the purpose of the initial lease or any renewal thereof now and no more than five years after the expiration of this lease or any renewal thereof, and fully understands that these reports will be used by owner in connection with Renter's occupancy of the apartment.

56. ENTIRE AGREEMENT: Owner and Renter have read this lease and agree that it contains the entire understanding of the parties regarding the rental of the subject apartment. The lease can only be changed in writing. The writing must be signed by both Owner and Renter.

If any part of this lease is determined to be unlawful, the remaining provisions of the lease will remain valid and in full force and effect.

→ 2246 WEBSTER AVENUE HDFC
Owner/Agent (on behalf of Owner)

SIGNATURE

MR. ERNESTO NUNEZ
Renter

Renter
Renter

EXHIBIT 4

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

2246 Webster Avenue, HDFC,
Plaintiff,

INDEX NO.
FILE NO. ~~13816A~~ 14285

-against-

Ernesto Nunez, Evelyn Martinez,

Defendant(s)

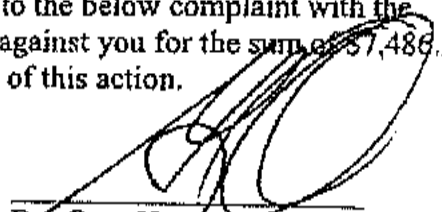
SUMMONS
Place of Venue is Plaintiff's
place of business:

2246 Webster Avenue
Bronx, NY 10457

To the above named defendants(s):

YOU ARE HEREBY SUMMONED to appear at the CIVIL COURT OF THE CITY OF NEW YORK, COUNTY OF BRONX at the office of the clerk of the said Court at 851 Grand Concourse, Bronx, NY 10451, in the COUNTY OF BRONX, State of New York, within the time provided by law as noted below and to file an answer to the below complaint with the clerk: upon your failure to answer, judgment will be taken against you for the sum of \$7,486.98 with interest thereon from May 1, 2005 together with costs of this action.

DATED: March 29, 2011


By: Gary Kavulich, Esq.,
Kavulich & Associates, P.C.
Attorney for Plaintiff
181 Westchester Avenue
Suite 500C
Port Chester, NY 10573
(914) 355-2074

Defendant's Address:

Ernesto Nunez
550 Audubon Avenue, Apt. 56
New York, NY 10040-3365

Evelyn Martinez,
707 N. 6th Street Apt. 2F
Allentown, PA 18102-1607

Note: The law provides that: (a) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or (b) If the summons is served by any means other than personal delivery to you within the City of New York, you must appear and answer within THIRTY days after proof of service thereof is filed with the Clerk of this Court.

COMPLAINT

FIRST ACTION: Plaintiff seeks to recover damages from defendant(s) for breach of a lease agreement in the sum of \$6,251.98 representing rental arrears for the months of May, 2005 balance of \$417.48; June, 2005 through and including March, 2006 at the agreed monthly sum of \$583.45 for the premises known as 2246 Webster Avenue, Apt.3 Bronx, NY 10457 together with costs and disbursements of this action and for such other and further relief as the court may deem just.

SECOND ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$735.00 representing damages together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

THIRD ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$500.00 representing reasonable attorneys fees together with costs and disbursements of this action and for such other further relief as the Court may deem just.

WHEREFORE, Plaintiff demands judgment (A) on the First Action, in the sum of \$6,251.98 plus interest from May 1, 2005 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (B) on the Second Action, in the sum of \$735.00 plus interest from May 1, 2005 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (C) on the Third Action, in the sum of \$500.00 together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

The Plaintiff in this action is NOT required to be licensed by the New York City Department of Consumer Affairs.

EXHIBIT 5

AFFIDAVIT OF SERVICE
CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

Index No. 33659/11
Filed: _____

Attorneys: Kavulich & Associates, P.C.
Address: 30 Church Street, Suite 26, New Rochelle, NY 10801
2246 WEBSTER AVENUE HDFC,

File No. ~~13816~~ 14285

vs.
ERNESTO NUNEZ,
EVELYN MARTINEZ,

State of New York County of Nassau SS:

Aston G. Evans II, being duly sworn deposes and says:

Deponent is not a party herein, is over 18 years of age. On May 13, 2011 at 7:23p.m.

At 707 N. 6th Street, Apt. 2E, Allentown, PA 18102-3365 served the within Summons and Complaint on: EVELYN MARTINEZ, Defendant therein named.

Individual ☐ By delivering a true copy of each to said recipient: deponent knew the person served to be the person described as said person therein.

Corporation ☐ By delivering to and leaving with _____ and that deponent knew the person so served and authorized to accept service on behalf of the Corporation

Suitable Age Person ☒ By delivering a true copy of each to a person of suitable age and discretion
Said premises is recipients ☐ actual place of business ☒ dwelling house within the state.

Affixing to Door ☐ By affixing a true copy of each to the door of said premises, which is recipients ☐ actual place of business ☐ dwelling house (place of abode) within the state

Mail Copy ☒ On May 14, 2011 deponent completed service under the last two sections by depositing a copy of the Summons and Complaint to the above address in a 1st Class properly addressed envelope marked "Personal and Confidential" in an official depository under the exclusive care and custody of the United States Post Office in the State of New York.

Deponent was unable, with due diligence to find the recipient or a person of suitable age and discretion having called thereat:

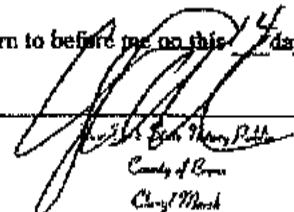
On the _____ day of _____ at _____
On the _____ day of _____ at _____
On the _____ day of _____ at _____

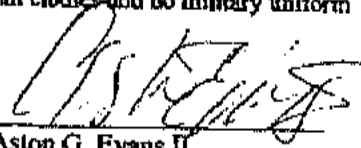
Description A description of the Defendant, or other person served on behalf of the Defendant
☐ Sex: F Color of skin: BRN Color of Hair: BLK Age: 35-40 Height: 5'3" Weight: 163LBS

Military Svce ☒ Deponent asked person spoken to whether the recipient was presently in military service of the United States Government or of the State of New York and was informed that the recipient is not. Recipient wore civilian clothes and no military uniform

Other ☒ "Jane Doe" stated that the Defendant is not in the military.

Sworn to before me on this 14 day of 5-11


Cheryl March
County of Bronx
Lic. No. 0171146042010
Commission Expires June 5, 2014


Aston G. Evans II
LIC# 1220069

JUL 25 PM 12:22

AFFIDAVIT OF SERVICE
CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

Index No. 33659/11
Filed: _____

Attorneys: Kavulich & Associates, P.C.

Address: 30 Church Street, Suite 26, New Rochelle, NY 10801

File No. ~~13816~~ 14285

2246 WEBSTER AVENUE HDPC,

VS.

ERNESTO NUNEZ,
EVELYN MARTINEZ,

State of New York County of Nassau SS:

Aston G. Evans II, being duly sworn deposes and says:

Deponent is not a party herein, is over 18 years of age. On May 14, 2011 at 8:00pm.

At: 550 Audubon Avenue, Apt. 56, New York, NY 10040-3365 served the within Summons and

Complaint on: ERNESTO NUNEZ, Defendant therein named.

Individual By delivering a true copy of each to said recipient: deponent knew the person
[] served to be the person described as said person therein.

Corporation By delivering to and leaving with _____ and that deponent knew the
[] person so served and authorized to accept service on behalf of the Corporation

Suitable Age By delivering a true copy of each to a person of suitable age and discretion
Person Said premises is recipients [] actual place of business [X] dwelling house within the
[X] state.

Affixing By affixing a true copy of each to the door of said premises, which is recipients
to Door [] actual place of business [] dwelling house (place of abode) within the state
[]

Mail Copy On May 16, 2011 deponent completed service under the last two sections by
[X] depositing a copy of the Summons and Complaint to the above address in a 1st
Class properly addressed envelope marked "Personal and Confidential" in an official
depository under the exclusive care and custody of the United States Post Office in the State
of New York.

Deponent was unable, with due diligence to find the recipient or a person of suitable age
and discretion having called thereat:

On the day of at

On the day of at

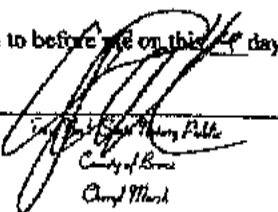
On the day of at

Description A description of the Defendant, or other person served on behalf of the Defendant
[] Sex: F Color of skin: BRN Color of Hair: BLK Age: 45-50 Height: 5'5" Weight: 150LBS

Military Svce Deponent asked person spoken to whether the recipient was presently in military
[X] service of the United States Government or of the State of New York and was
informed that the recipient is not. Recipient wore civilian clothes and no military uniform

Other
[X] "Jane Doe" stated that the Defendant is not in the military.

Sworn to before me on this 14 day of 5-11


Cheryl March
Notary Public
County of Bronx
Lic. No. 0121146045816
Commission Expires June 3, 2014

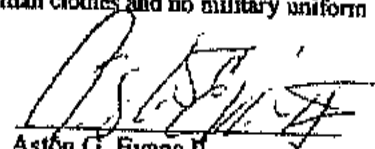

Aston G. Evans II
LIC# 1220069

EXHIBIT 6

Bronx County Civil Court
Civil Judgment

Plaintiff(s):
2246 Webster Avenue, HDFC

vs.

Defendant(s):
Ernesto Nunez;
Evelyn Martinez

Index Number: CV-033659-11/BX

Judgment issued: On Default

On Motion of:

Kavulich & Associates PC
181 Westchester Avenue, Suite 500C, Port
Charter, NY 10573-

Amount claimed	\$2,802.11	Index Number Fee	\$45.00	Transcript Fee	\$0.00
Less Payments made	\$0.00	Consumer Credit Fee	\$0.00	County Clerk Fee	\$0.00
Less Counterclaim Offset	\$0.00	Service Fee	\$25.00	Enforcement Fee	\$40.00
Interest 11/01/2005 at 9%	\$1,563.58	Non-Military Fee	\$0.00	Other Disbursements	\$0.00
Attorney Fees	\$0.00	Notice of Trial Fee	\$0.00	Other Costs	\$0.00
Cost By Statute	\$20.00	Jury Demand Fee	\$0.00		
Total Damages	\$4,365.69	Total Costs & Disbursements	\$130.00	Judgment Total	\$4,495.69

The following named parties, addressed and identified as creditors below:

Plaintiff creditor(s) and address

(1) 2246 Webster Avenue, HDFC
2246 Webster Avenue, Bronx, NY 10457-

Shall recover of the following parties, addresses and identified as debtors below:

Defendant debtor(s) and address

(1) Ernesto Nunez
550 Audubon Avenue, Apt. 56, New York, NY 10040-
(2) Evelyn Martinez
707 N. 6th Street, Apt. 2F, Allentown, PA 18102-

Judgment entered at the Bronx County Civil Court, 851 Grand Concourse, Bronx, NY 10451, in the STATE OF NEW YORK
in the total amount of \$4,495.69 on 01/12/2012 at 08:58 AM.

Judgment sequence 3

Carol Alt
CHIEF CLERK
Carol Alt, Chief Clerk Civil Court

EXHIBIT 7



Bank

America's Most Convenient Bank™

TD Bank, N.A.
1701 Route 70 East
Cherry Hill, NJ 08034-5400
T: 888-751-9000
www.tdbank.com

May 13, 2011

TD Bank, N.A.
Levy Department
P.O. Box 1880
Cherry Hill, NJ 08034

13816

Kavulich & Associates, P.C.
181 Westchester Ave
Suite 500C
Port Chester, NY 10573

Re: 2246 Webster Avenue, HDFC v. Ernesto Nunez, Evelyn Martinez
Index Number: 046395-05
TD Bank reference number: 307947

Dear Sir or Madam:

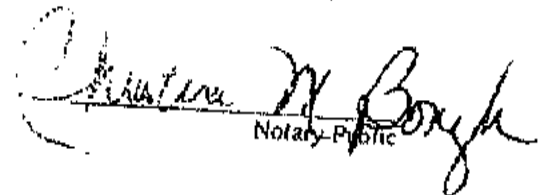
TD Bank, N.A., is in receipt of the Information Subpoena you served in connection with the above referenced matter. A search of our records indicates that TD Bank, N.A. maintains an account or accounts in the name of the debtor as set forth below. Please note that no funds have been restrained in connection with this matter, as it was determined that (i) at the time of service the Restraining Notice was void pursuant to NY CPLR § 5222, § 5222(h), § 5222(i) and/or (ii) at the time of an Account Review there were no funds in excess of the Protected Amount as set forth in 31 CFR Part 212.

Account	Name	Amount
2893	Ernesto J Nunez, Evelyn Martinez	\$15.95
Total	\$15.95	

TD Bank, N.A.


By: Dorianne Melz,
Levy Associate

Sworn to before me
this 13th day of May 2011


Notary Public

CHRISTINA BONCZAK
NOTARY PUBLIC
STATE OF NEW JERSEY
EXPIRES ON 07/01/2015

EXHIBIT 8

Narvulich & Associates, P.C.
181 Westchester Avenue, Suite 500C
Port Chester, NY 10573

NOTICE
ID NOTICE
RETURN

CERTIFIED MAIL



91 7106 2133 3938 6789 8509

Ernesto Nunez
550 Audubon Avenue
Apt. 56
New York, NY 10040



NIXIE

100 DE 1 01 12/04/11

RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

BC: 105736552206 A1509-01174-04-39

10041035332557908322

Kavulich & Associates, P.C.
181 Westchester Avenue, Suite 500C
Port Chester, NY 10573

NOTICE
RETURN

CERTIFIED MAIL



91 710A 2133 3938 6787 8509

Ernesto Nunez
550 Audubon Avenue
Apt. 56
New York, NY 10040



NIXIE 100 DE 1 01 12/04/11
RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD
BC: 10573652203 A1583-01174-04-32
100405336567306542

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Article Addressed to:</p> <p>Ernesto Nunez 850 Audubon Avenue Apt. 56 New York, NY 10040</p>		<p>A. Signature <input checked="" type="checkbox"/> Agent</p> <p>B. Received by (Printed Name) <input checked="" type="checkbox"/> Addressed</p> <p>C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>2. Article Number</p> <p>7108 2133 3938 6789 8509</p>		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> G.D.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>5. Article Number</p> <p>7108 2133 3938 6789 8509</p>		<p>6. Return Receipt</p> <p>10299-02-14-1540</p>	

EXHIBIT 9



Registry-SafeRent

TENANT ACCOUNT RECORD REPORTING FORM

Purpose of this form: 1. Register a New Tenant 2. Report the Close of a Tenancy 3. Report the Performance of a Tenant
INFORMATION MUST BE COMPLETE AND ACCURATE

Property Name: 2246 Webster Ave. HFC Acct #: 3

Phone #: 718-295-2882 Contact Person: JO ANN

Address of Rented Premises:
 Street Address: 2246 Webster Ave Apt#: 3

City: Bronx State: N.Y. Zip: 10457

Tenant Account Record is for:

☐ Move-in
☒ Move-out (Satisfactory)
☒ Move-out (Unsatisfactory)
 ☒ Evicted
☐ Skipped
☐ Damages
 ☐ Skip Trace
☐ Credit Grant
☐ Payment Made

Move-in Date

Move-out Date

Last Paid Date

9-16-02 2-19-05

Rent Amount

Balance Owing

of Payments Past Due

583.45 6986.98

List All Lease Holders for this Rental Unit (SSN is MANDATORY):

Last Name	First Name	M.I.	Social Security#	D.O.B
<u>Nunez</u>	<u>Ernesto</u>		<u>[REDACTED] 3547</u>	<u>[REDACTED] 80</u>
<u>Martinez</u>	<u>Evelyn</u>		<u>[REDACTED] 1227</u>	<u>[REDACTED] 82</u>

Fax To: 1-800-846-7344 or
 Mail To: Registry-SafeRent, Inc.
 Attn: Director of T.A.R.S.
 P.O. Box 988
 Longwood, FL 32751

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: PART 34

INDEX NO. 33659/11

FILE NO. 14285

-----X
2246 WEBSTER AVENUE, HDFC,

Plaintiff,

AFFIRMATION OF SERVICE

- against -

ERNESTO NUNEZ,
EVELYN MARTINEZ,

Defendant.
-----X

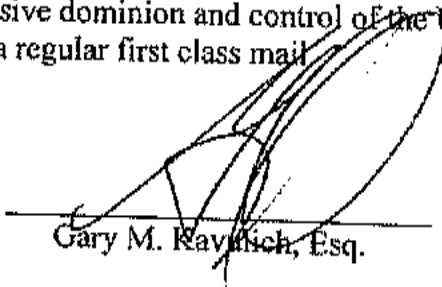
Gary M. Kavulich, Esq., an attorney duly admitted to practice law before the courts of the State of New York hereby affirms the following under the penalty of perjury.

On May 3, 2013, I served the within Affirmation in Opposition upon Ernesto Nunez and Evelyn Martinez, the Defendants' in this action, by depositing a true copy in a post-paid envelope addressed to:

Ernesto Nunez
933 S Front Street
Allentown, PA 18103

Evelyn Martinez
933 S Front Street
Allentown, PA 18103

in an official depository under the exclusive dominion and control of the United States Postal Service within the State of New York via regular first class mail



Gary M. Kavulich, Esq.

503

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: PART 34

Index No. 33659/11
File No. 14285

2

3

2246 WEBSTER AVENUE, HDFC,

Plaintiff,

AFFIRMATION IN OPPOSITION

- against -

ERNESTO NUNEZ,
EVELYN MARTINEZ,

Defendants.

-----X

GARY KAVULICH, ESQ., an attorney duly admitted to practice law before the Court of the State of New York, hereby affirms under the penalty of perjury:

1. I am a member of Kavulich & Associates, P.C., attorneys for the Plaintiff herein. As such, I am fully familiar with the facts and circumstances of the within proceeding, except as to those matters stated upon information and belief, as to those matters I believe them to be true. The basis of my belief is information supplied to me by my client, information contained within the court file and information maintained within my office.

2. I make this affirmation in opposition to the Defendants' Ernesto Nunez and Evelyn Martinez Orders to Show Cause which seek to restore case to the calendar and request that the judgment be vacated. Please see Defendants' instant Order to Show Cause annexed hereto as Exhibit "1."

STATEMENT OF THE UNDISPUTED FACTS

3. On or about March 1, 2005, the Plaintiff entered into a one (1) year lease agreement with the Defendant for the premises known as 2246 Webster Avenue, Apartment 3, Bronx, New York 10458. Please see a copy of the Plaintiff's agent, Janine Losey, annexed hereto as Exhibit "2." Annexed hereto as Exhibit "3" is a copy of the said lease agreement.

4. On or about February 19, 2005, the Defendants were evicted from the premises. Please see aforementioned Exhibit "9."

5. The Plaintiff thereafter commenced the instant proceeding against the Defendants for breach of a lease agreement by service of a summons and complaint on or about March 29, 2011. Please see a copy of said summons and complaint annexed hereto as Exhibit "4." Please see also a copy of the affidavit of service for the Defendants' annexed hereto as Exhibit "5."

6. Thereafter, the Defendants failed to interpose an answer to said summons and complaint and the Plaintiff was then awarded a judgment in the sum of \$4,459.69. Please see a copy of the judgment annexed hereto as Exhibit "6."

7. Plaintiff then commenced execution measures pursuant to that judgment and on or about May 13, 2011, by serving an information subpoena with a restraining notice on the Defendants' current financial institution.

8. Pursuant to that information subpoena the funds were below the attachable limit. Please see a copy of said report annexed hereto as Exhibit "7."

9. Plaintiff then commenced execution measures pursuant to that judgment and on or about March 29, 2012, it caused New York City Marshall Stephen Biegel by serving a income execution upon the Defendant Ernesto Nunez current place of employment.

10. Pursuant to that income execution the Plaintiff has received \$3,169.02 towards the satisfaction of the underlying judgment.

11. Thereafter, the Defendants' moved via an Order to Show Cause to vacate the default judgment for which a court date was set for April 23, 2013 and was adjourned to May 17, 2013.

12. Plaintiff now opposes Defendants' motion.

THE DEFENDANT'S INSTANT MOTION DOES NOT DEMONSTRATE AN EXCUSABLE
DEFAULT AND MERITORIOUS DEFENSE. THEREFORE THE MOTION SHOULD BE
DENIED

13. In order to meet the standard to allow this Court to vacate a judgment the Defendants' are required to demonstrate both a reasonable excuse for the default and the existence of a potentially meritorious defense to the action. CPLR 5051(a)(1).

14. Moreover, should the Defendants' demonstrate a reasonable excuse for the default, a Court must nonetheless uphold the default when the Defendants' papers submitted in support thereof are replete with self-serving, vague, unsubstantiated denials, and unsupported legal conclusions. *Thapt v. Lutheran Med. Ctr.*, 89 AD3d 837 [2d Dep't 2011]; *Garal Wholesalers, Ltd. v. Raven Brands, Inc.*, 82 AD3d 1041 [2d Dep't 2011].

15. The Defendants', in their affidavit in support, asserts as a reason for requesting a new trial is specifically that "I do not owe the debt, I did not receive the summons and complaint, unjust enrichment and laches." Please see the aforementioned Exhibit "1."

16. However, the Defendants do not provide adequate or accurate proof that they do not owe a debt to the Plaintiff. As a result, the Defendants' explanation is only self-serving and unsubstantiated.

17. As to the Defendant Ernesto Nunez claim that he did not receive the summons and complaint. Please see the aforementioned Exhibit "5" also see a copy of the certified mail to the Defendant Ernesto Nunez that was returned by the Post Office marked "unclaimed" annexed hereto as Exhibit "8."

18. The certified mail was addressed to the address of the Defendant, Ernesto Nunez stated on the Order to Show Cause.

19. However, the Defendant Ernesto Nunez does not provide adequate or accurate proof that he did not receive a copy of the summons and complaint. As a result, the Defendant's reason is only self-serving and unsubstantiated.

20. As stated earlier, on or about March 1, 2005, the Plaintiff entered into a one (1) year lease agreement with the Defendants' for the premises known as 2246 Webster Avenue, Apartment 3, Bronx, New York 10458. Please see the aforementioned Exhibit "3."

21. On or about February 19, 2006, the Defendants' were evicted from the premises. Please see aforementioned Exhibit "9."

22. As a result, the Defendants' are liable for the rent payments for the months of October, 2005 through and including March, 2006 even though they had earlier been evicted from the premises and no longer lived there. Please see aforementioned Exhibit "9."

23. Moreover, the tenant ledger we currently posses clearly show that the Defendants at the time of their eviction had a balance of \$6,986.98. Annexed hereto as Exhibit "9" is a copy of the said tenant ledger.

24. Thus, this Court should find the Defendants' reason not persuasive and thus not reasonable pursuant to CPLR 5051(a)(1).

25. Even if this Court finds the Defendants' above reason to constitute a reasonable default, the Defendants' must additionally allege a meritorious defense in order for their motion to be successful.

26. The Defendants' fail to allege a meritorious defense.

27. Thus, the Defendants' alleged defense has therefore failed to provide anything but mere conclusory statements.

28. Moreover, the Defendants' alleged meritorious defense does not state any cognizable legal principle.

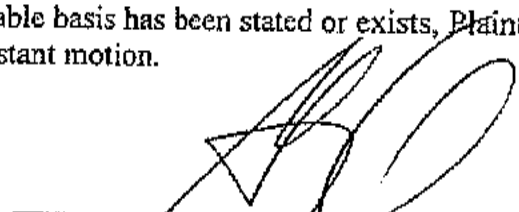
29. Thus, in accord with *Thapt* and *Garal*, this Court must uphold the herein judgment agreed to by both parties.

30. Conversely, the Plaintiff's claim has merit as the Defendants' breached the parties' lease agreement by not paying rent pursuant to said lease. To date, the Defendants' owe the Plaintiff the amount agreed to in the judgment in the amount of \$4,495.69 (less payment of \$3,169.02) plus interest from October 1, 2005, costs, disbursements and fees. Please see the aforementioned Exhibit "6."

31. As the Defendants' fail to set forth both an excusable default and a meritorious defense, and the Plaintiff continues to suffer from the unsatisfied debt, the Plaintiff respectfully requests this Court to deny the Defendants' motion to vacate the judgment.

WHEREFORE, as no legal or equitable basis has been stated or exists, Plaintiff respectfully asks that this Court deny the instant motion.

Dated: April 24, 2013
Port Chester, NY



Kavulich & Associates, P.C.
By: Gary Kavulich, Esq.
Attorney for Plaintiff
181 Westchester, Ave., Suite 500C
Port Chester, NY 1057
(914) 355-2074

EXHIBIT 1

Civil Court of the City of New York
County of Bronx Part 39

2246 Webster Avenue, HDPC
-against-
Ernesto Nunez... et al.

Index Number: CV-033689-11/BK



ORDER TO SHOW CAUSE

To restore case to the calendar, and vacate any judgment, liens and income executions on this defendant on this Index number.
allow proposed answer or dismissing the action

UPON the annexed affidavit of Ernesto Nunez, sworn to on April 9, 2013, and upon all papers and proceedings herein:

Let the Claimant(s)/Plaintiff(s) or Claimant(s)/Plaintiff(s) attorney(s) show cause at:

Bronx Civil Court
851 Grand Concourse
Bronx, NY 10451
Part 34C Room 504

on April 23, 2013 at 9:30 AM

or as soon thereafter/as counsel may be heard, why an order should not be made:

VACATING the Judgment, and all income executions and restraining notices, if any, restoring the case to the calendar, deeming the proposed answer filed and/or dismissing the action if warranted, and/or granting such and further relief as may be just.

PENDING the hearing of this Order to Show Cause and the entry of an Order thereon, let all proceedings on the part of the Claimant(s)/Plaintiff(s), Claimant(s)/Plaintiff(s) attorney(s) and agent(s) and any Marshal or Sheriff of the City of New York for the enforcement of said Judgment be stayed.

SERVICE of a copy of this Order to Show Cause, and annexed Affidavit, upon the:

Claimant(s)/Plaintiff(s) or named attorney(s);
(Judge to Initial)

Sheriff or Marshal:
(Judge to Initial)

[Signature] by Personal Service by "In Hand Delivery"
[Signature] by Certified Mail, Return Receipt Requested
[Signature] by First Class Mail with official Post Office
Certificate of Mailing

[Signature] by Personal Service by "In Hand Delivery"
[Signature] by Certified Mail, Return Receipt Requested
[Signature] by First Class Mail with official Post Office
Certificate of Mailing

on or before 4/10/13, shall be deemed good and sufficient

PROOF OF SUCH SERVICE may be filed with the Clerk in the Part indicated above on the return date of this Order to Show Cause.

Mail to Attorney:
Kavulich & Associates PC
(Counsel for PltF),
at 181 Westchester Avenue,
Suite 500C,
Port Chester, NY 10573

Sheriff/Marshal:
NYC Marshal
Blegel, Stephen, Marshal
109 W 38 Street
Suite 200
New York, NY 10018-3615

April 9, 2013

DATE

[Signature]
Hon. Jose A. Padilla, Civil Court Judge, Acting JSC (NYC)

2246 Webster Avenue, HDPC
-against-
Ernesto Nunez... et al.

Affidavit in support of an order to show cause to restore case to the calendar, vacate any judgment, liens and income executions on this defendant on this Index number.
allow proposed answer or dismissing the action

State of New York, County of New York:

Ernesto Nunez, being duly sworn, deposes and says:
(Defendant's initials)

EN a) I am the Party named as (Defendant) (Respondent) in the above titled action

2. EN a) I have been served with a summons and complaint in this action. [NOTE: if Small Claims skip #3, and go to # 4]

EN b) I have not been served, and my first notice of legal action was [NOTE: if you complete any of #2b, skip #3, #4, #5, and go to #6]

EN a Notice of Default Judgment mailed to me

EN a Restraining Notice on my bank account.

EN a copy of an Income Execution served on

EN Other: marshal's notice dated 4/5/2012

3. EN a) I did not appear and answer in the Clerk's Office because: [NOTE: if you complete # 3a, skip and go to #6].

b) I did not appear and answer in the Clerk's Office

and I received a date for trial.

but the answer was entered late

Other: _____

4. On the Date of Trial before Judge/Arbitrator

a stipulation (a written agreement) was made between claimant/plaintiff and defendant.

a judgment was entered after the trial.

a judgment was entered against me by default for my failure to appear.

Other: _____

5. My reason for not

complying with the stipulation is _____

following the order of the Court is _____

appearing in court on the date scheduled for trial is _____

Other: _____

6. EN I allege that I have a good defense because: NO. Marshall closed Apt before the trial - they are asking me to pay 75% of the debt. I am not paying. I am not paying. I am not paying.

7. EN a) I have not had a previous Order to Show Cause regarding this index number.

b) I have had a previous Order to Show Cause regarding this index number but I am making this application because: _____

8. EN I request that the Judgment be vacated, that the case be restored to the calendar AND that the answer be deemed timely filed.

Sworn to before me this day April 9, 2013

Signature of Court Employee and Title

(Sign Name) _____

Ernesto Nunez

550 Audubon Avenue

Apt. 56

New York, NY 10040

State of New York, County of Bronx

Index No: CV-033659-11/BX



2246 Webster Avenue, HDPC
-against-
Ernesto Nunez... et al.

PROPOSED ANSWER IN
WRITING

~~CONSUMER CREDIT TRANSACTION~~
ACTION FOR MONEY ONLY

Defendant, Ernesto Nunez, at 550 Audubon Avenue, Apt. 56, New York, NY 10040 answers the Complaint as follows: 933 S Front St. Allentown PA 18103

Check all that apply)

1 ☐ General Denial: I deny the allegations in the complaint

SERVICE

2 ☒ I did not receive a copy of the summons and complaint

3 ☐ I received the Summons and Complaint, but service was not correct as required by law.

DEFENSES

4 ☒ I do not owe this debt

5 ☐ I did not incur this debt. I am the victim of identity theft or mistaken identity.

6 ☒ I have paid all or part of the alleged debt.

7 ☒ I dispute the amount of the debt.

8 ☐ I do not have a business relationship with Plaintiff. (Plaintiff lacks standing.)

9 ☐ The NYC Department of Consumer Affairs shows no record of plaintiff having a license to collect a debt.

10 ☐ Plaintiff does not allege a debt collection license number in the Complaint.

11 ☐ Statute of Limitations (the time has passed to sue on this debt: more than six years.)

12 ☐ The debt has been discharged in bankruptcy.

13 ☐ The collateral (property) was not sold at a commercially reasonable price.

14 ☒ Unjust enrichment (the amount demanded is excessive compared with the original debt.)

15 ☐ Violation of the duty of good faith and fair dealing.

16 ☐ Unconscionability (the contract is unfair.)

17 ☒ Laches (plaintiff has excessively delayed in bringing this lawsuit to my disadvantage.)

18 ☐ Defendant is in the military.

19 ☐ Other: _____

OTHER

20 ☒ Please take notice that my only source of income is wages, which is exempt from collection.

COUNTERCLAIM

21 Counterclaim(s):\$ _____ Reason: _____

VERIFICATION

State of New York, County of Bronx ss:

Ernesto Nunez, being duly sworn, deposes and says: I am the Defendant in this proceeding. I have read the Answer in Writing Consumer Credit Transaction and know the contents thereof to be true to my own knowledge except as to those matters stated on information and belief, and as to those matters I believe them to be true

Sworn to before me this APR - 9 2017 day of 20

Michael Doe

[Signature]
Defendant

City of New York
County of Bronx Part 39

Index Number: CV-035659-11/BX

2246 Webster Avenue, RDEC
-against-
Ernesto Nunez... et al.

ORDER TO SHOW CAUSE
To restore case to the calendar, and vacate any judgment, liens and income executions on this defendant on this Index number, allow proposed answer or dismissing the action

UPON the annexed affidavit of Evelyn Martinez, sworn to on April 9, 2013, and upon all papers and proceedings herein:

Let the Claimant(s)/Plaintiff(s) or Claimant(s)/Plaintiff(s) attorney(s) show cause at:

Bronx Civil Court
851 Grand Concourse
Bronx, NY 10451
Part 34C Room 504
on *APRIL 23, 2013* at 9:30 AM

4/23/13

or as soon thereafter as counsel may be heard, why an order should not be made:

VACATING the Judgment, and all income executions and restraining notices, if any, restoring the case to the calendar, deeming the proposed answer filed and/or dismissing the action if warranted, and/or granting such and further relief as may be just.

PENDING the hearing of this Order to Show Cause and the entry of an Order thereon, let all proceedings on the part of the Claimant(s)/Plaintiff(s), Claimant(s)/Plaintiff(s) attorney(s) and agent(s) and any Marshal or Sheriff of the City of New York for the enforcement of said Judgment be stayed.

SERVICE of a copy of this Order to Show Cause, and annexed Affidavit, upon the:

Claimant(s)/Plaintiff(s) or named attorney(s):
(Judge to Initial)

Sheriff or Marshal:
(Judge to Initial)

overnight next day mail
by Personal Service by "In Hand Delivery"
by Certified Mail, Return Receipt Requested
by First Class Mail with official Post Office Certificate of Mailing

Personal Service on hand on Marshall
by Personal Service by "In Hand Delivery"
by Certified Mail, Return Receipt Requested
by First Class Mail with official Post Office Certificate of Mailing

on or before *4/10/13*, shall be deemed good and sufficient

PROOF OF SUCH SERVICE may be filed with the Clerk in the Part indicated above on the return date of this Order to Show Cause.

Mail to Attorney:
Kavulich & Associates P.C.
(Counsel for Pltf)
at 181 Westchester Avenue,
Suite 500C,
Port Chester, NY 10573

Sheriff/Marshal:

Biegel, Stephen, Marshall
109 West 38th Street
Suite 200
New York NY 10018

April 9, 2013
DATE

4949
Hon. Jose A. Padilla, Civil Court Judge, Acting

Moving must provide proof of all payments made to Marshall on next court date.
Page 109 *APR 10 13*

County of Bronx
2246 Webster Avenue, HDEC
-against-
Ernesto Nunez... et al.

Index # CV-033689-1176

Affidavit in support of an order to show cause to restore case to the calendar, vacate any judgment, liens and income executions on this defendant on this index number, allow proposed answer or dismissing the action

State of New York, County of New York:

Evelyn Martinez, being duly sworn, deposes and says:

(Defendant's initials)

1. ☒ (a) I am the Party named as (Defendant) (Respondent) in the above titled action

2. ☒ (a) I have been served with a summons and complaint in this action. [NOTE: if Small Claims skip #3, and go to # 4]

☒ (b) I have not been served, and my first notice of legal action was [NOTE: if you complete any of #2b, skip #3, #4, #5, and go to #6]

☒ a Notice of Default Judgment mailed to me
☒ a Restraining Notice on my bank account.
☒ a copy of an Income Execution served on

Other: answer due to co-defendant's garnishment

3. ☐ (a) I did not appear and answer in the Clerk's Office because: [NOTE: if you complete # 3a, skip and go to #6].

☐ (b) I did not appear and answer in the Clerk's Office
☐ and I received a date for trial.
☐ but the answer was entered late
☐ Other: _____

4. On the Date of Trial before Judge/Arbitrator

☐ a stipulation (a written agreement) was made between claimant/plaintiff and defendant.
☐ a judgment was entered after the trial.
☐ a judgment was entered against me by default for my failure to appear.
☐ Other: _____

5. My reason for not

☐ complying with the stipulation is _____
☐ following the order of the Court is _____
☐ appearing in court on the date scheduled for trial is _____
☐ Other: _____

6. ☒ I allege that I have a good defense because:

Marshall close Apt before the time they are running, we had played 75% or more of the debt by a cash money on pay check every week (wages)

☒ (a) I have not had a previous Order to Show Cause regarding this index number.

☐ (b) I have had a previous Order to Show Cause regarding this index number but I am making this application because: _____

7. ☒ I request that the Judgment be vacated, that the case be restored to the calendar AND that the answer be deemed timely filed.

Sworn to before me this day April 9, 2013

Signature of Court Employee and Title

(Sign Name)

Evelyn Martinez

707 N. 6th Street

Apt. 2F

Allentown, PA 18102

Civil Court of the City of New York
County of Bronx

Index No: CV-033659-11/BK

2246 Webster Avenue, HDPC
-against-
Ernesto Nunez... et al.

PROPOSED ANSWER IN
WRITING

☐ ACTION FOR MONEY ONLY

Defendant, Evelyn Martinez, at 302 W 6th Street, Apt. 2F, Allentown, PA 18102 answers the Complaint as follows:

433 S. Front St.
Allentown PA 18103

Check all that apply)

- 1 ☐ General Denial: I deny the allegations in the complaint
- 2 ☒ SERVICE
- 3 ☒ I did not receive a copy of the summons and complaint
- 4 ☐ I received the Summons and Complaint, but service was not correct as required by law.
- 5 ☐ DEFENSES
- 6 ☒ I do not owe this debt
- 7 ☐ I did not incur this debt. I am the victim of identity theft or mistaken identity.
- 8 ☒ I have paid all or part of the alleged debt.
- 9 ☒ I dispute the amount of the debt.
- 10 ☐ I do not have a business relationship with Plaintiff. (Plaintiff lacks standing.)
- 11 ☐ The NYC Department of Consumer Affairs shows no record of plaintiff having a license to collect a debt.
- 12 ☐ Plaintiff does not allege a debt collection license number in the Complaint.
- 13 ☐ Statute of Limitations (the time has passed to sue on this debt: more than six years.)
- 14 ☐ The debt has been discharged in bankruptcy.
- 15 ☐ The collateral (property) was not sold at a commercially reasonable price.
- 16 ☒ Unjust enrichment (the amount demanded is excessive compared with the original debt.)
- 17 ☐ Violation of the duty of good faith and fair dealing.
- 18 ☐ Unconscionability (the contract is unfair.)
- 19 ☒ Laches (plaintiff has excessively delayed in bringing this lawsuit to my disadvantage.)
- 20 ☐ Defendant is in the military.
- 21 ☐ Other: _____

OTHER

- 20 ☒ Please take notice that my only source of income is wages, which is exempt from collection.

COUNTERCLAIM

- 21 Counterclaim(s):\$ _____ Reason: _____

VERIFICATION-

State of New York, County of Bronx ss:

Evelyn Martinez, being duly sworn, deposes and says: I am the Defendant in this proceeding. I have read the Answer in Writing Consumer Credit Transaction and know the contents thereof to be true to my own knowledge except as to those matters stated on information and belief, and as to those matters I believe them to be true

Sworn to before me this _____ day of _____ 20____

Evelyn Martinez
Defendant

EXHIBIT 2

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: PART 3C

INDEX NO. 33659/11
FILE NO. 14285

-----X
2246 WEBSTER AVENUE, HDFC,

Plaintiff,

-against-

AFFIDAVIT IN
OPPOSITION

ERNESTO NUNEZ,
EVELYN MARTINEZ,

Defendants.
-----X

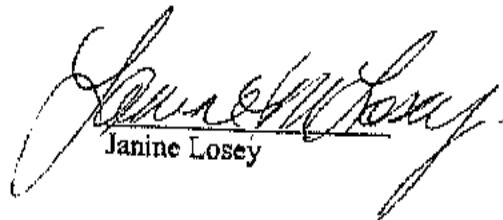
STATE OF NEW YORK)
) SS
COUNTY OF BRONX)

I, Janine Losey, being duly sworn deposes and says:

1. That I am the managing agent for the Plaintiff, 2246 Webster Avenue, HDFC herein, and as such I am fully familiar with the facts and circumstances of this proceeding.
2. The Plaintiff entered into a lease agreement with the Defendants, for a period of one (1) year from September 16, 2002 through and including September 30, 2003 for the premises known as 2246 Webster Avenue, Apt. 3, Bronx, NY 10457.
3. The Parties thereafter entered into a series of renewal lease agreements, with the latest renewal lease agreement ending on March, 2006.
4. Defendant then breached said renewal lease agreement and allowed a balance of \$2,802.11 to accumulate representing rental arrears for the months of October, 2005 through and including March, 2006 at the agreed upon monthly sum of \$583.45.

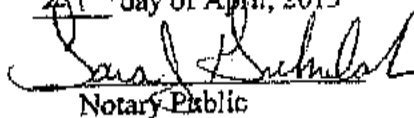
5. On or about February 19, 2005, the Defendants' were evicted from the premises known as 2246 Webster Avenue, Apt. 3, Bronx, New York 10458.
6. The Plaintiff then brought this instant action seeking to recover arrears balance owed by Defendants' to Plaintiff.
7. Thereafter, Defendants' failed to interpose an answer thereby defaulting on this action.
8. Accordingly, on January 12, 2012, a judgment was entered in the amount of \$4,495.69.
9. On, or about March 29, 2012, Plaintiff then commenced Income Execution measure pursuant to that judgment on the defendant, Ernesto Nunez current place of employment.
10. As of this date, Plaintiff has received \$3,169.02 towards the satisfaction of the said judgment.
11. Therefore, the remaining amount of \$2,802.11 remains due and outstanding.
12. My attorney has further advised me that the Defendant now seeks to vacate the judgment taken against them in this matter.

WHEREFORE, your deponent prays that the Court deny the instant motion as no legal or equitable basis has been provided.


Janine Losey

Sworn to before me this

24th day of April, 2013


Notary Public

TARA J. GREKULAK
NOTARY PUBLIC-STATE OF NEW YORK
No. 01665122968
Qualified in Westchester County
My Commission Expires February 02, 2017

EXHIBIT 3



Copyright © 1995 by Rent Stabilization Association

RENT STABILIZED LEASE **ATTACHED RIDER SETS FORTH RIGHTS AND OBLIGATIONS OF TENANTS AND** **LANDLORDS UNDER THE RENT STABILIZATION LAW. (LOS DERECHOS Y** **RESPONSABILIDADES DE INQUILINOS Y CASEROS ESTÁN DISPONIBLE EN ESPAÑOL.)**

Owner and Renter make this apartment lease agreement as follows:

Owner's Name: 2246 WEBSTER AVENUE HDFC

Owner's Address for Notices: 660 E. 183 ST. BX, NY 10458

Renter's Name: 1. MR. ERNESTO NUNEZ Social Security #: [REDACTED] 3547

2. _____ Social Security #: _____

Renter's Present Address: 677 BROOK AVENUE, BRONX, NY 10451

Address of Premises to Be Rented: 2246 WEBSTER AVENUE, BRONX, NY 10457

Apt. No.: 3 Term of This Lease (Check one): ☒ 1 year ☐ 2 years *Monthly Rent: \$ 605.96
PREFERRED RENT: \$525.00

Date of Lease: 09/16/02 Beginning: 09/16/02 Ending: 09/30/03

* If a preferential rent is being charged, the amount of the preferential rent is set forth in the attached rider.

1. HEADINGS: Paragraph headings are only for ready reference to the terms of this lease.

2. CONDITION "AS IS": Renter acknowledges inspecting the apartment prior to signing this lease and accepts the apartment in the condition it is in as of such inspection. Renter acknowledges that the apartment is free of defects. Owner warrants that the apartment and building are fit for habitation and there are no conditions dangerous to health, life or safety.

3. USE AND OCCUPANCY OF APARTMENT: The apartment is to be used and occupied for private residential purposes only, as the primary residence of Renter. The apartment may be occupied only by Renter named in this lease, Renter's immediate family, or other occupants in accordance with the applicable provisions of law. Renter agrees that the apartment will be occupied only by the following individuals, in addition to Renter:

Name:	Birth Date:	Relation to Renter:
→ Ernesto Nunez	[REDACTED] 30	Self
Evelyn Martinez	[REDACTED] 32	Spouse
[REDACTED]	[REDACTED] 02	Daughter

Renter is obligated to advise Owner, in writing, if any additional occupant moves into the apartment. Such notice must be furnished by Renter to Owner within 10 days of the date such additional occupant moves into the apartment. The apartment may not be occupied by more than the number of occupants permitted by §27-2075 of the Housing Maintenance Code or by §235-f of the Real Property Law, whichever is less.

4. RENTER'S POSSESSION OF APARTMENT: Owner shall not be liable for failure to give Renter possession of the apartment on the beginning day of the lease term. Rent shall be payable as of the beginning of the term unless Owner is unable to give possession, in which case rent shall be payable as of the date possession is available. Owner must give possession within 30

days of the beginning day of the lease term. If not, Renter may cancel this lease and obtain a refund of money deposited. Owner will notify Renter as of the date possession is available. The ending date of the lease term will not change in the event Owner is unable to give possession as of the beginning of the lease term.

5. RENT, ADDED RENT, RENT ADJUSTMENTS: a. Rent payments for each month are due on or before the first day of each month at the address above or at a location designated by Owner in writing. Notice from Owner to Renter that rent is due is not required. The rent must be paid in full without deductions. The first month's rent and added rent must be paid when Renter signs this lease. b. Renter may be required to pay other charges and fees to Owner under the terms of this lease. They are called "added rent." This added rent will be payable as rent, together with the next monthly rent due. If Renter fails to pay the added rent on time, Owner shall have the same rights against Renter as if Renter failed to pay rent. c. If this apartment is subject to the rent stabilization laws, the rent to be paid during the term of this lease may be adjusted, prospectively or retroactively, pursuant to an order of the New York State Division of Housing and Community Renewal (DHCR). Renter agrees to be bound by such determination, and to pay any increase in rent in the manner specified by the agency. In the event the applicable rent guideline has not been fixed by the Rent Guidelines Board (RGB) by the date the lease is executed, the rent provided for in this lease may be increased or decreased retroactively to the commencement date of the lease consistent with orders issued by the RGB. Added rent as defined herein shall include, but is not limited to:

HCI IMPROVEMENTS

TENANT DAMAGES TO
PREMISES

J-51

6. FAILURE TO PAY RENT ON DUE DATE: Rent is due by the first day of each month. Payment after the 10th day of each month shall be considered a "late payment." Renter expressly agrees and understands that three (3) or more late payments in any twelve month period shall be deemed to be a failure to comply

if any, shall be used by messengers and trades people
ing and leaving and the passenger elevators, if any, shall
used by them for any purpose.

LAUNDRY: Laundry machines if any, provided by Owner,
be used by Renter in the manner and at the times that Owner
designate. Renter shall not dry or air clothes on the roof or
the terrace or balcony, if any. Renter may use laundry machines,
any, at their own risk.

21. OBJECTIONABLE CONDUCT: Renter, their families,
guests, employees, or visitors shall not engage in any conduct
which makes the apartment or building less fit to live in for Renter
or other occupants. Renter shall not make or permit any disturbing
noises in the apartment or building or permit anything to be done
that will interfere with the rights, comfort or convenience of other
renters. Renter shall not play a musical instrument or operate or
allow to be operated audio or video equipment so as to disturb or
annoy any other occupant of the building.

43. NO PROJECTIONS: Renter may not install or cause to be
installed anything on the roof or outside wall of the building or
any balcony, terrace, or window.

44. MOVING: Renter can use the elevator or service elevator, if
any, to move furniture and possessions only on designated days
and at designated hours. Owner shall not be liable for any costs,
expenses or damages incurred by Renter in moving because of
delays caused by unavailability of the elevator. Renter shall be
liable for any damage caused to the building or the apartment
during such move.

**45. WAIVER OF FOREIGN SOVEREIGN AND DIPLOMATIC
IMMUNITY:** Renter represents that he is not subject to foreign
sovereign or diplomatic immunity. Renter expressly waives the
doctrine of foreign sovereign immunity and diplomatic immunity
and consents to the jurisdiction of the Housing Court and all
other courts. Renter expressly represents that in the event a
judgment is obtained against him, Owner may enforce the
judgment against any property or assets of Renter, wherever they
are located.

46. MILITARY STATUS: Renter represents that he is not in the
United States military, and is not dependent upon a member of
the United States military. Renter must notify Owner within ten
days of enlistment in the military.

47. PARTIES BOUND: This lease agreement is binding on Owner
and Renter, and on all those who claim a right, or have a right, to
succeed to the legal interest of Owner and Renter.

48. FORMS: Renter agrees to complete any and all forms that
may be requested by Owner from time to time.

49. SUBORDINATION: The rights of Renter, including all rights
granted under the terms of this lease are, and shall be, subject to
and subordinate to the terms of any mortgage on the building or
the land under the building which now exists, or which may
hereafter exist. The foregoing shall include but not be limited to
any modification, consolidation or extension agreement of any
existing mortgage on the land or building.

50. SINGULAR/PLURAL and JOINT/SEVERAL: The use of
the singular shall be deemed to include the plural, and vice versa,
whenever the context so requires. If more than one entity is renting
the apartment, their obligations shall be joint and several.

51. CONDEMNATION/EMINENT DOMAIN: If the building,
or any part of the building, is taken or condemned by a public
authority or government agency, this lease will end on the date of
such taking. In such event, Renter will have no claim for damages
against Owner based upon such taking, and Renter will be required
to surrender the apartment to Owner upon 30 days written notice
from Owner to Renter of such government taking.

52. CONSTRUCTION/CONVENIENCE: Neighboring buildings
may be the subject of construction, renovation or demolition.
Owner will not be liable to Renter, nor shall Renter seek to hold
Owner liable for interference with views, light, air flow, or
ventilation, the covenant of quiet enjoyment, or breach of the
warranty of habitability whether such interference is temporary
or permanent, if such interference results from activities conducted
on adjoining Owners' properties.

53. NO WAIVER: The failure of Owner to insist at any time upon
strict performance of any clause in this lease shall not be construed
as a waiver of Owner's rights. No waiver by Owner of any
provision of this lease can be made unless made in writing by
Owner. Acceptance of rent by Owner with knowledge of the breach
of any condition or term of this lease is not a waiver of the breach.

54. CREDIT REPORTS: Renter authorizes Owner to use the
Social Security number of Renter to obtain any and all credit
reports for the purpose of the initial lease or any renewal thereof
now and no more than five years after the expiration of this lease
or any renewal thereof, and fully understands that these reports
will be used by owner in connection with Renter's occupancy of
the apartment.

55. ENTIRE AGREEMENT: Owner and Renter have read this
lease and agree that it contains the entire understanding of the
parties regarding the rental of the subject apartment. The lease
can only be changed in writing. The writing must be signed by
both Owner and Renter.

If any part of this lease is determined to be unlawful, the remaining provisions of the lease will remain
valid and in full force and effect.

→ 2246 WEBSTER AVENUE HDFC
Owner/Agent (on behalf of Owner)
Consolato Ciccone
SIGNATURE

MR. ERNESTO NUNEZ
Renter
[Signature]
Renter
Renter

EXHIBIT 4

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

-----X
2246 Webster Avenue, HDPC,
Plaintiff,

INDEX NO.
FILE NO. ~~138160~~ 14285

-against-

SUMMONS
Place of Venue is Plaintiff's
place of business:

Ernesto Nunez, Evelyn Martinez,

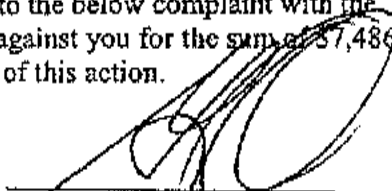
2246 Webster Avenue
Bronx, NY 10457

Defendant(s)

-----X
To the above named defendants(s):

YOU ARE HEREBY SUMMONED to appear at the CIVIL COURT OF THE CITY OF NEW YORK, COUNTY OF BRONX at the office of the clerk of the said Court at 851 Grand Concourse, Bronx, NY 10451, in the COUNTY OF BRONX, State of New York, within the time provided by law as noted below and to file an answer to the below complaint with the clerk: upon your failure to answer, judgment will be taken against you for the sum of \$7,486.98 with interest thereon from May 1, 2005 together with costs of this action.

DATED: March 29, 2011


By: Gary Kavulich, Esq.,
Kavulich & Associates, P.C.
Attorney for Plaintiff
181 Westchester Avenue
Suite 500C
Port Chester, NY 10573
(914) 355-2074

Defendant's Address:

Ernesto Nunez,
550 Audubon Avenue, Apt. 56
New York, NY 10040-3365

Evelyn Martinez,
707 N. 6th Street Apt. 2F
Allentown, PA 18102-1607

Note: The law provides that: (a) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or (b) If the summons is served by any means other than personal delivery to you within the City of New York, you must appear and answer within THIRTY days after proof of service thereof is filed with the Clerk of this Court.

COMPLAINT

FIRST ACTION: Plaintiff seeks to recover damages from defendant(s) for breach of a lease agreement in the sum of \$6,251.98 representing rental arrears for the months of May, 2005 balance of \$417.48; June, 2005 through and including March, 2006 at the agreed monthly sum of \$583.45 for the premises known as 2246 Webster Avenue, Apt.3 Bronx, NY 10457 together with costs and disbursements of this action and for such other and further relief as the court may deem just.

SECOND ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$735.00 representing damages together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

THIRD ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$500.00 representing reasonable attorneys fees together with costs and disbursements of this action and for such other further relief as the Court may deem just.

WHEREFORE, Plaintiff demands judgment (A) on the First Action, in the sum of \$6,251.98 plus interest from May 1, 2005 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (B) on the Second Action, in the sum of \$735.00 plus interest from May 1, 2005 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (C) on the Third Action, in the sum of \$500.00 together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

The Plaintiff in this action is NOT required to be licensed by the New York City Department of Consumer Affairs.

EXHIBIT 5

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

Index No. 33659/11
Filed: _____

Attorneys: Kavulich & Associates, P.C.

Address: 30 Church Street, Suite 26, New Rochelle, NY 10801

File No. 13816-14285

2246 WEBSTER AVENUE HDPC,

vs.

ERNESTO MUNEZ,
EVELYN MARTINEZ,

State of New York County of Nassau SS:

Aston G. Evans II, being duly sworn deposes and says:

Deponent is not a party herein, is over 18 years of age. On May 13, 2011 at 7:21p.m.

At 707 N. 6th Street, Apt. 2F, Allentown, PA 18102-3365 served the within Summons and Complaint on: EVELYN MARTINEZ, Defendant therein named.

Individual ☐ By delivering a true copy of each to said recipient: deponent knew the person served to be the person described as said person therein.

Corporation ☐ By delivering to and leaving with _____ and that deponent knew the person so served and authorized to accept service on behalf of the Corporation

Suitable Age Person ☒ By delivering a true copy of each to a person of suitable age and discretion
Said premises is recipients ☐ actual place of business ☒ dwelling house within the state.

Affixing to Door ☐ By affixing a true copy of each to the door of said premises, which is recipients ☐ actual place of business ☐ dwelling house (place of abode) within the state

Mail Copy ☒ On May 14, 2011 deponent completed service under the last two sections by depositing a copy of the Summons and Complaint to the above address in a 1st Class properly addressed envelope marked "Personal and Confidential" in an official depository under the exclusive care and custody of the United States Post Office in the State of New York.

Deponent was unable, with due diligence to find the recipient or a person of suitable age and discretion having called thereat:

On the _____ day of _____ at _____

On the _____ day of _____ at _____

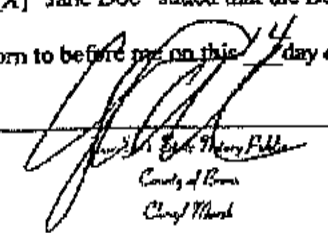
On the _____ day of _____ at _____

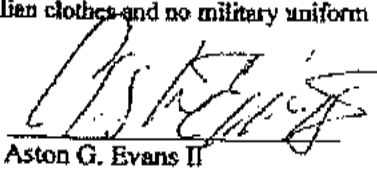
Description A description of the Defendant, or other person served on behalf of the Defendant
☐ Sex: F Color of skin: BRN Color of Hair: BLK Age: 35-40 Height: 5'3" Weight: 163LBS

Military Svce ☒ Deponent asked person spoken to whether the recipient was presently in military service of the United States Government or of the State of New York and was informed that the recipient is not. Recipient wore civilian clothes and no military uniform

Other
☒ "Jane Doe" stated that the Defendant is not in the military.

Sworn to before me on this 14 day of 5-11


Cheryl M. Felt
County of Bronx
Notary Public
Lic. No. 05977, 46042816
Commission Expires June 3, 2014


Aston G. Evans II
LIC# 1220069

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

AFFIDAVIT OF SERVICE

Index No. 33659/11
Filed: _____

Attorneys: Kavulich & Associates, P.C.
Address: 30 Church Street, Suite 26, New Rochelle, NY 10801
2246 WEBSTER AVENUE HDFC,

File No. ~~13816~~ 14285

vs.
ERNESTO NUNEZ,
EVELYN MARTINEZ,

State of New York County of Nassau SS:

Aston G. Evans II, being duly sworn deposes and says:

Deponent is not a party herein, is over 18 years of age. On May 14, 2011 at 8:00 a.m.

At: 550 Audubon Avenue, Apt. 56, New York, NY 10040-3365 served the within Summons and Complaint on: ERNESTO NUNEZ, Defendant therein named.

Individual ☐ By delivering a true copy of each to said recipient: deponent knew the person served to be the person described as said person therein.

Corporation ☐ By delivering to and leaving with _____ and that deponent knew the person so served and authorized to accept service on behalf of the Corporation

Suitable Age Person ☒ By delivering a true copy of each to a person of suitable age and discretion
Said premises is recipients ☐ actual place of business ☒ dwelling house within the state.

Affixing to Door ☐ By affixing a true copy of each to the door of said premises, which is recipients ☐ actual place of business ☐ dwelling house (place of abode) within the state

Mail Copy ☒ On May 16, 2011 deponent completed service under the last two sections by depositing a copy of the Summons and Complaint to the above address in a 1st Class properly addressed envelope marked "Personal and Confidential" in an official depository under the exclusive care and custody of the United States Post Office in the State of New York.

Deponent was unable, with due diligence to find the recipient or a person of suitable age and discretion having called thereat:

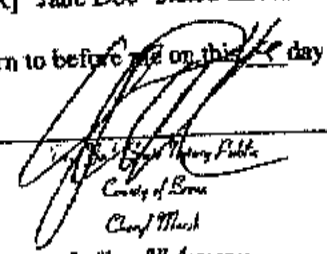
On the day of at
On the day of at
On the day of at

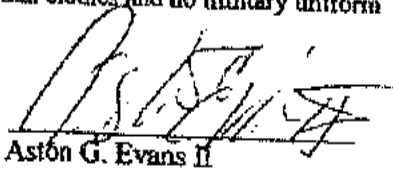
Description A description of the Defendant, or other person served on behalf of the Defendant
☐ Sex: F Color of skin: BRN Color of Hair: BLK Age: 45-50 Height: 5'5" Weight: 150LBS

Military Svce ☒ Deponent asked person spoken to whether the recipient was presently in military service of the United States Government or of the State of New York and was informed that the recipient is not. Recipient wore civilian clothes and no military uniform

Other ☒ "Jane Doe" stated that the Defendant is not in the military.

Sworn to before me on this 5th day of


Cheryl Marsh
Lic. No. 01711, Acc. 42816
Commission Expires June 3, 2014


Aston G. Evans II
LIC# 1220069

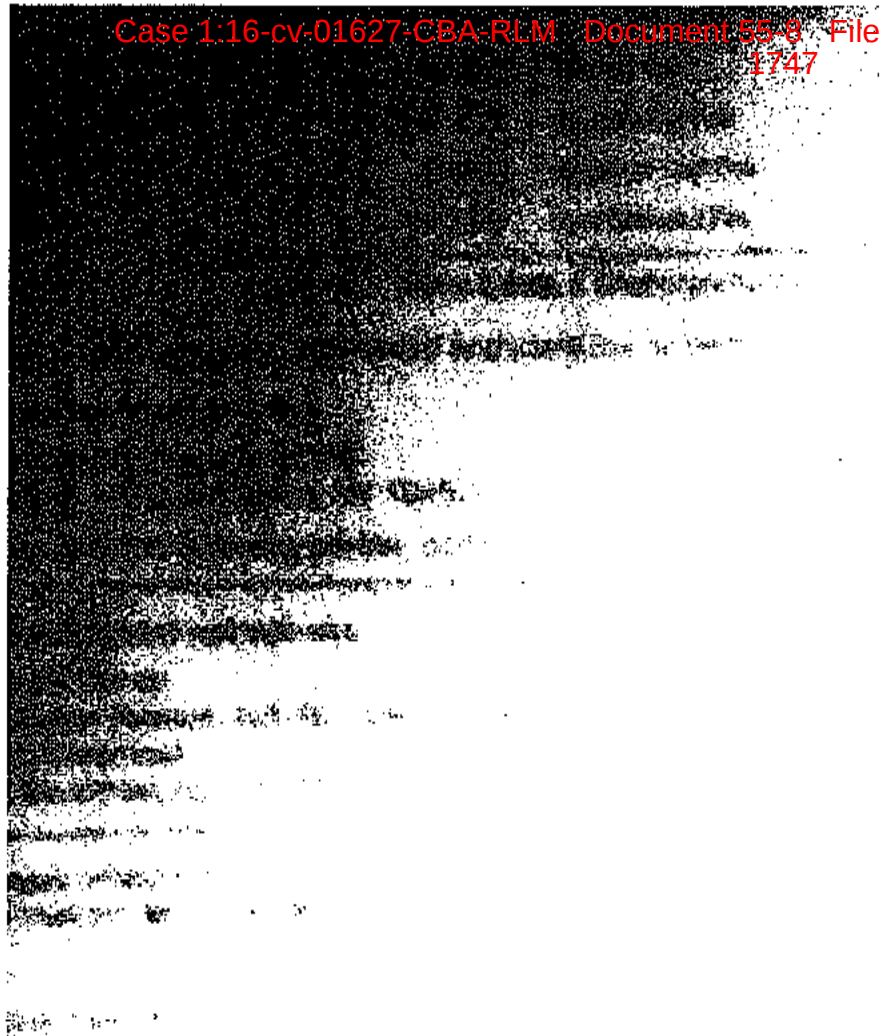


EXHIBIT 6

Bronx County Civil Court
Civil JudgmentPlaintiff(s):
2246 Webster Avenue, HDFC

vs.

Defendant(s):
Ernesto Nunez;
Evelyn Martinez

Index Number: CV-033659-11/EX

Judgment Issued: On Default

On Motion of:

Kavulich & Associates PC
181 Westchester Avenue, Suite 500C, Port
Chester, NY 10573-

Amount claimed	\$2,802.11	Index Number Fee	\$45.00	Transcript Fee	\$0.00
Less Payments made	\$0.00	Consumer Credit Fee	\$0.00	County Clerk Fee	\$0.00
Less Counterclaim Offset	\$0.00	Service Fee	\$25.00	Enforcement Fee	\$40.00
Interest 11/01/2005 at 9%	\$1,563.58	Non-Military Fee	\$0.00	Other Disbursements	\$0.00
Attorney Fees	\$0.00	Notice of Trial Fee	\$0.00	Other Costs	\$0.00
Cost By Statute	\$20.00	Jury Demand Fee	\$0.00		
Total Damages	\$4,365.69	Total Costs & Disbursements	\$130.00	Judgment Total	\$4,495.69

The following named parties, addressed and identified as creditors below:

Plaintiff creditor(s) and address

(1) 2246 Webster Avenue, HDFC
2246 Webster Avenue, Bronx, NY 10457-

Shall recover of the following parties, addresses and identified as debtors below:

Defendant debtor(s) and address

(1) Ernesto Nunez
550 Audubon Avenue, Apt. 56, New York, NY 10040-
(2) Evelyn Martinez
707 N. 6th Street, Apt. 2F, Allentown, PA 18102-Judgment entered at the Bronx County Civil Court, 851 Grand Concourse, Bronx, NY 10451, in the STATE OF NEW YORK
in the total amount of \$4,495.69 on 01/12/2012 at 08:58 AM.

Judgment sequence 3

Carol Alt
CHIEF CLERK
Carol Alt, Chief Clerk Civil Court

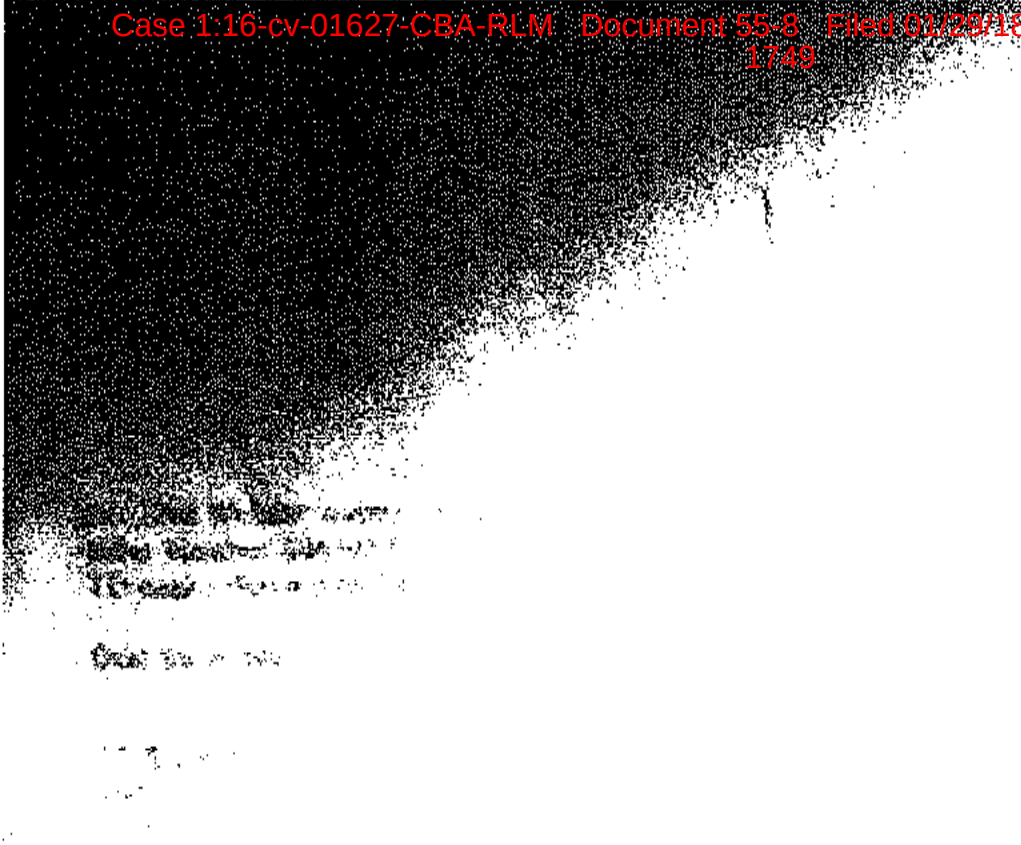


EXHIBIT 7

**Bank**

America's Most Convenient Bank®

TD Bank, N.A.
 1701 Route 70 East
 Cherry Hill, NJ 08034-5400
 T: 888-751-9000
 www.tdbank.com

May 13, 2011

Kavulich & Associates, P.C.
 181 Westchester Ave
 Suite 500C
 Port Chester, NY 10573

13816

TD Bank, N.A.
 Levy Department
 P.O. Box 1880
 Cherry Hill, NJ 08034

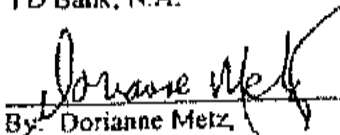
Re: 2246 Webster Avenue, HDFC v. Ernesto Nunez, Evelyn Martinez
 Index Number: 046395-05
 TD Bank reference number: 307947

Dear Sir or Madam:

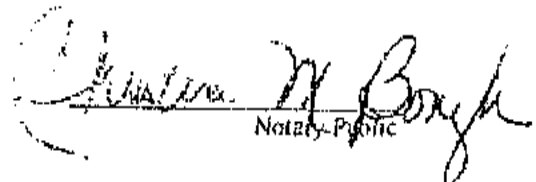
TD Bank, N.A., is in receipt of the Information Subpoena you served in connection with the above referenced matter. A search of our records indicates that TD Bank, N.A. maintains an account or accounts in the name of the debtor as set forth below. Please note that no funds have been restrained in connection with this matter as it was determined that (i) at the time of service the Restraining Notice was void pursuant to NY CPLR § 5222, § 5222(h), § 5222(i) and/or (ii) at the time of an Account Review there were no funds in excess of the Protected Amount as set forth in 31 CFR Part 212.

Account	Name	Amount
2893	Ernesto J Nunez, Evelyn Martinez	\$15.95
Total	\$15.95	

TD Bank, N.A.


 By: Dorianne Metz,
 Levy Associate

Sworn to before me
 this 13th day of May 2011


 Notary Public

CHRISTINA BONCZAK
 NOTARY PUBLIC
 STATE OF NEW JERSEY
 LICENSE NO. 21723 (01/11/11)

EXHIBIT 8

Kuvvullich & Associates, P.C.
181 Westchester Avenue, Suite 500C
Port Chester, NY 10573

NOTICE
NOTICE
RETURN

CERTIFIED MAIL



91 7108 2133 3938 6989 8509

Ernesto Nunez
550 Audubon Avenue
Apt. 56
New York, NY 10040



NIXIE

100 DE 1 01 12/04/11
RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

BC: 10573652203 A1583-01174-04-39

100405336587305322



Kavulich & Associates, P.C.
181 Westchester Avenue, Suite 500C
Port Chester, NY 10573

NOTICE
NOTICE
RETURN

CERTIFIED MAIL



6059 6969 966E EET2 9072 76

Ernesto Nunez
550 Audubon Avenue
Apt. 56
New York NY 10040

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11/04/11 FO

RECEIVED
JAN 10 1964
U.S. DEPT. OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C.

SECRET
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1004033357906502

1523-0114-04-00



Page 130

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>Ernesto Nunez 550 Audubon Avenue Apt. 510 New York, NY 10040</p>		<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X</p> <p>B. Received by (Printed Name) <input type="checkbox"/> Date of Delivery</p> <p>C. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
		<p>3. Service Type <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>2. Article Number</p> <p>7108 2133 3938 6989 8509</p>		<p>102596-02-M-1540</p>	

EXHIBIT 9



Registry-SafeRent

TENANT ACCOUNT RECORD REPORTING FORM

Purpose of this form: 1. Register a New Tenant 2. Report the Close of a Tenancy 3. Report the Performance of a Tenant
INFORMATION MUST BE COMPLETE AND ACCURATE

Property Name: 2246 Webster Ave. HOFc Apt #: 3

Phone #: 718-295-2892 Contact Person: JOAN

Address of Rented Premises:
 Street Address: 2246 Webster Ave Apt#: 3

City: Bronx State: N.Y. Zip: 10457

Tenant Account Record is for:

☐ Move-in
☒ Move-out (Satisfactory)
☒ Move-out (Unsatisfactory)
 ☒ Evicted
☐ Skipped
☐ Damages
 ☐ Skip Trace
☐ Credit Gram
☐ Payment Made

Move-in Date	Move-out Date	Last Paid Date
9-16-02	2-19-05	

Rent Amount	Balance Owning	# of Payments Past Due
583.45	6986.98	

List All Lease Holders for this Rental Unit (SSN is MANDATORY):

Last Name	First Name	M.I.	Social Security#	D.O.B
Nunez	Ernesto		[REDACTED] 3547	[REDACTED] 80
Martinez	Evelyn		[REDACTED] 1227	[REDACTED] 82

Fax To: 1-800-866-7344 or
 Mail To: Registry-SafeRent, Inc.
 Attn: Director of T.A.R.S
 P.O. Box 988
 Longwood, FL 32757

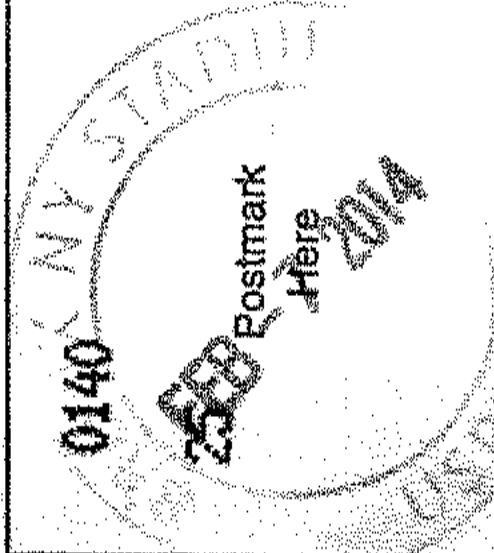
U.S. Postal Service[®]
CERTIFIED MAIL[™] RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

PORT CHESTER NY 10573 **ALL USE**

Postage	\$	\$0.49
Certified Fee		\$3.30
Return Receipt Fee (Endorsement Required)		\$2.70
Restricted Delivery Fee (Endorsement Required)		\$0.00
Total Postage & Fees	\$	\$6.49



02/07/2014

Sent To

Kavulich & Associates PC.

Street, Apt. No.

or PO Box No. 181 westchester Ave. suite 500

City, State, ZIP+4

Port Chester New York 10573

PS Form 3800, August 2006

See Reverse for Instructions

516 220 7000 0E92 E702

-against-
Ernesto Nunez; Evelyn Martinez
Defendant(s)

PLEASE TAKE NOTICE that upon the annexed affidavit of Ernesto Nunez sworn to on 7th day of February, 2014, and the exhibits annexed thereto, and upon all the prior pleadings and proceedings had herein, the defendant will move this court located at 851 Grand Concourse, Bronx, New York 10451 Part 34, 5th Floor, Room 503, on the 5^{ed} day of March, 2014, at 9:30 am, or as soon thereafter as can be heard for an Order:

TO RESTORE THE CASE TO THE TRIAL CALENDAR FOR THE PURPOSE OF ENFORCING A
DECISION/ORDER ENTERED ON 5/17/2013, BY HON. RUBEN FRANCO.

and for such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that (check the applicable box below):

- ☒ Appearances are required on the return date of the motion by the moving party. The non moving party(ies) should also attend to interpose any response.
- ☐ these papers have been served on you at least eight days before the motion is scheduled to be heard. You must serve your answering papers, if any, at least two days before such time upon the movant.
- ☒ these papers have been served on you at least twelve days before the motion is scheduled to be heard. You must serve your answering papers, if any, at least seven days before such time upon the movant.

MAIL TO:

Kavulich & Associates PC
(Counsel for Pltf)
181 Westchester Avenue
Suite 500C
Port Chester, New York 10573

All answering papers to the Court are to be filed on the return date of the motion with the Clerk in the Part listed above.

February 7, 2014

From: Ernesto Nunez
933 S. Front St
Allentown, Pennsylvania 18103

933 S. Front St
Allentown, Pennsylvania 18103

MTN ~~Dist. 746~~ R9 1700T
64242.10 (encl'd) by Y. DDM

Page 135
HON. DONALD A. MILES

Civil Court of the City of New York
County of Bronx

Index Number: CV-033659-11/BX



2246 Webster Avenue, HDPC
Plaintiff(s)

AFFIDAVIT IN SUPPORT OF
NOTICE OF MOTION

-against-
Ernesto Nunez; Evelyn Martinez
Defendant(s)

Ernesto Nunez, being duly sworn, states that I would like to obtain the following relief from the

Court: to restore the case to the trial calendar to enforce the decision/order dated 05/17/2013, by Hon. Ruben Franco

The basis for my request is : because the judge order
for all garnish money to be returned
to me and they haven't not comply
with the order. the judge gavel-
Last time I spoke with their
lawyer, they said that I didn't
have any documents that says
that the money was suppose to
be refunded to me.

WHEREFORE, THE UNDERSIGNED RESPECTFULLY REQUESTS THE WITHIN MOTION
BE GRANTED.

Sworn to before me this FEB - 7 2014
day of 20

COURT
REV. ASST.

Notary Public / Court Employee

Signature of Movant

Civil Court of the City of New York
County of _____

Part _____

Index Number 23659/11

Motion Cal. # _____

Motion Seq. # _____

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion.

Papers

Numbered

Notice of Motion and Affidavits Annexed.....

Order to Show Cause and Affidavits Annexed.....

Answering Affidavits.....

Replying Affidavits.....

Exhibits.....

Other.....

Claimant(s)/Plaintiff(s)/Petitioner(s)
against

ERNESTO WUÑEZ
EVELYN MARTINEZ
Defendant(s)/Respondent(s)

FILED	CLERK
MAY 17 2013	CLERK
BRONX COUNTY	

Upon the foregoing cited papers, the Decision/Order on this Motion to VACATE

DEFAULT JUDGMENT is as follows:

GRANTED. PLAINTIFF'S AFFIDAVIT
OF SERVICE INDICATES SERVICE OF THE
SUMMONS AND COMPLAINT ON MAY 17, 2011
DEFENDANTS HAVE PRESENTED TO THE COURT
DOCUMENTS INCLUDING A LEASE, DRIVER'S
LICENSE, PAY CHECKS, BANK STATEMENTS
WHICH CLEARLY SHOW THAT THEY
HAVE BEEN RESIDING IN PENNSYLVANIA
SINCE APPROXIMATELY 2006.
BASED UPON THE DOCUMENTARY EVIDENCE
COURT FINDS THAT DEFENDANTS WERE NOT
PROPERLY SERVED.

THE ACTION IS DISMISSED ALL LEVIES, ATTACHMENTS
ON EARNINGS AND BANK ACCOUNTS ARE VACATED AND ALL FUNDS
SEIZED AS A RESULT OF THIS ACTION SHALL BE
RETURNED TO THE DEFENDANTS.
THIS CONSTITUTES THE ORDER OF THE COURT.

Date _____

Judge, Civil Court

HON. RUBÉN FRANCO

Page 137

7012 3460 0002 1120 9936

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PORT CHESTER, NY 10573

Postage	\$	\$0.46
Certified Fee		\$3.10
Return Receipt Fee (Endorsement Required)		\$0.00
Restricted Delivery Fee (Endorsement Required)		\$0.00
Total Postage & Fees	\$	\$3.56

Postmark Here

Sent To _____
Street, Apt. No.,
or PO Box No. _____
City, State, ZIP+4 _____

PS Form 3800, August 2006 See Reverse for Instructions